

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE GLORIA M. NAVARRO
4 CHIEF UNITED STATES DISTRICT JUDGE

5 UNITED STATES OF AMERICA, :
6 Plaintiff, :
7 vs. : No. 2:16-cr-00100-GMN-CWH
8 JAN ROUVEN FUECHTENER, :
9 Defendant. :
10

11 TRANSCRIPT OF BENCH TRIAL - DAY 1
12 (Pages 1 through 225)

13
14 November 14, 2016

15
16 Las Vegas, Nevada
17
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19 FTR No. 7D/20161114 @ 8:38 a.m.
20

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1 LAS VEGAS, NEVADA, NOVEMBER 14, 2016, 8:38 A.M.

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3 P R O C E E D I N G S

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5 COURTROOM ADMINISTRATOR: All rise.

6 THE COURT: Thank you. You may be seated.

7 COURTROOM ADMINISTRATOR: Are we ready, counsel?

8 MS. ROOHANI: Yes.

9 MR. MARCHESE: We are.

10 COURTROOM ADMINISTRATOR: This is the time set
11 for the bench trial in Case No. 2:16-cr-00100-GMN-CWH,
12 United States of America versus Jan Rouven Fuechtener.

13 Counsel, please make your appearances for the
14 record.

15 MS. ROOHANI: Good morning, Your Honor. Ellie
16 Roohani and Lisa Cartier-Giroux for the United States.

17 We're joined at counsel table with our case
18 agent, FBI Special Agent Mari Panovich.

19 THE COURT: Good morning, Ms. Panovich,
20 Ms. Cartier-Giroux, and Ms. Roohani.

21 MR. MARCHESE: Good morning, Your Honor. Jess
22 Marchese on behalf of Mr. Jan Rouven Fuechtener. He's
23 present. Mr. Benjamin Durham is here, as well, and Michael
24 Sanft.

25 THE COURT: Good morning, Mr. Sanft,

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1 Mr. Fuechtener, Mr. Durham, Mr. Marchese.

2 All right. Anything we need to address before
3 we begin with opening statements?

4 MS. CARTIER-GIROUX: Yes, Your Honor. We have a
5 renewed motion for reciprocal discovery. I just want to
6 make sure on the record that there is no other outstanding
7 discovery that we are entitled to, either based on the
8 witnesses or any other that we would be entitled to under
9 the rule.

10 MR. MARCHESE: To my knowledge, Your Honor, they
11 are in possession of everything that we intend to introduce
12 at trial.

13 THE COURT: All right. Thank you.

14 MS. CARTIER-GIROUX: Your Honor, the other issue
15 is this morning I filed a memorandum to support an oral
16 motion that we're going to be making at trial. It's an
17 evidentiary issue. It's regard to hearsay statements that
18 we believe are exceptions to the hearsay rule.

19 We are planning on introducing, and defense is
20 aware of, some jail calls made by the defendant. They are
21 statements made by an adverse party. We believe they're
22 admissible obviously under the rule.

23 But we are also attempting to admit as
24 nonhearsay the statements of the co-conspirator as to the
25 possession of child pornography, which is Frank Alfter, who

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1 is the other person in the telephone call.

2 We did the motion just to give the Court the
3 heads-up as opposed to just jumping and saying it's
4 admissible for the truth. Once we call the witness the
5 Court obviously does not have to rule on that until we get
6 to the end of the government's case.

7 THE COURT: These are recorded jail calls?

8 MS. CARTIER-GIROUX: Yes, ma'am.

9 THE COURT: All right. So there's no
10 expectation of privacy in those calls.

11 MS. CARTIER-GIROUX: No, ma'am.

12 THE COURT: And you're separating them out into
13 two different categories. One is the admissions by the
14 defendant, anything that he actually said that was
15 inculpatory --

16 MS. CARTIER-GIROUX: Correct.

17 THE COURT: -- and then the other category is
18 the other person who is on the phone --

19 MS. CARTIER-GIROUX: Right.

20 THE COURT: -- and those statements. They're
21 not co-conspirator statements. What --

22 MS. CARTIER-GIROUX: He's an unindicted
23 co-conspirator.

24 THE COURT: Oh, unindicted co-conspirator. I
25 see. All right.

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1 MS. CARTIER-GIROUX: As to the possession of
2 child pornography.

3 And we believe that during the course of our
4 case, there will be sufficient evidence for the Court that
5 he is an unindicted co-conspirator as to the possession of
6 child pornography, not the original charges in the
7 indictment.

8 And in that -- and for those reasons the
9 statements should come in because the statements are
10 regarding continuing conspiracy to hide the crime from the
11 government.

12 THE COURT: Okay.

13 MR. MARCHESE: Well, Your Honor, we're at a
14 little bit of a disadvantage. Neither Mr. Durham, nor
15 Mr. Sanft, nor myself have seen this motion. It must have
16 been filed within the last hour or so.

17 So it's kind of difficult for me to give an
18 intelligent response based upon the fact that we haven't
19 seen it.

20 But we'll take a look at it, and we'll address
21 it accordingly as it comes up. I don't anticipate -- and
22 obviously the government might be able to give more
23 information in reference to this. But I don't anticipate
24 that this issue will arise today based on the testimony.

25 MS. CARTIER-GIROUX: And, Judge, just for

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1 clarification, we believe it comes in very easily under
2 801(d) (2) (E). It would have been normally an oral motion,
3 but I understand that the Court -- most courts in this
4 district like us to front issues way in advance. It's not
5 a motion in limine, it's just something that we would have
6 made orally.

7 THE COURT: All right. So it is No. 137 on the
8 docket now. It was filed today. As the government said,
9 it's not anything that I need to rule on yet and, in fact,
10 some of the foundation for the second category, the facts
11 that support that necessary foundation, are going to be --
12 or they plan to adduce during trial anyhow, so there's no
13 point in addressing it now.

14 And you can -- Mr. Marchese, you can either
15 address it orally at the time when it arises, or you can go
16 ahead and file a written response if you want to, but it's
17 not necessary.

18 MR. MARCHESE: Thank you, Your Honor.

19 THE COURT: All right. Anything else?

20 MS. CARTIER-GIROUX: No, Your Honor.

21 THE COURT: All right. Let's go ahead and start
22 then with the government's opening statement.

23 GOVERNMENT'S OPENING STATEMENT

24 MS. ROOHANI: Good morning, Your Honor.

25 THE COURT: Good morning.

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1 MS. ROOHANI: There are four counts in this
2 case: possession, receipt, distribution, and advertising of
3 child pornography. There's no real dispute about the
4 physical evidence in this case, nor can there really be.
5 There is a ton of child pornography found all over the
6 defendant's house.

7 As Your Honor is aware, these are exceptionally
8 graphic and violent videos of children being raped by
9 adults or being forced to engage in sex acts with other
10 juveniles, children, and sometimes even animals.

11 The government anticipates that the only real
12 question for this Court will be who did it. And the
13 government will prove that the answer to that question is
14 the defendant, Jan Rouven Fuechtener.

15 And we will do that through the defendant's
16 admission, Hotmail e-mails, Grindr, GigaTribe, Skype chats,
17 the forensic evidence, and the sheer volume of child
18 pornography that was found at the defendant's home.

19 I'm going to talk briefly about the evidence in
20 this case, Your Honor, and the charges.

21 Over 9,000 videos of child pornography were
22 found on nine devices seized from the defendant's home.
23 The devices were found in almost every area of the home,
24 including the backyard casita, the covered pool deck area,
25 the kitchen of the main house, in an upstairs office

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1 between the master bedroom and a spare bedroom, and in the
2 master bedroom closet.

3 The devices included computers and laptops which
4 were capable of connecting to the Internet to download and
5 distribute child pornography but also external hard drives,
6 SD cards and thumb drives which, as Your Honor is aware,
7 need to be plugged into computers to actually receive those
8 files.

9 And these weren't short videos either. Most of
10 them were over five minutes long, and some of them were as
11 long as an hour and a half.

12 In terms of the evidence for each of the
13 charges, the first and most straightforward is possession.
14 We have thousands of videos on numerous devices found in a
15 house that's owned by the defendant.

16 We have a statement of the defendant post-
17 *Miranda* saying that he knew that child pornography was
18 being downloaded on computers at his home.

19 When the agents went to execute the search
20 warrant, there were only two people in the house at the
21 time, a visitor, Joel Rosales, who was not residing there,
22 and the defendant.

23 And when the warrant was being executed, agents
24 found child pornography on pause on a computer in the
25 casita. That computer was password protected, and the

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1 defendant gave agents the password that day to that
2 computer.

3 When the defendant was confronted with evidence
4 that there was child pornography on his computers, he lied
5 to save himself.

6 MR. MARCHESE: Objection. Argumentative.

7 THE COURT: It's an opening statement.

8 MS. ROOHANI: The defendant --

9 THE COURT: Overruled. Go ahead.

10 MS. ROOHANI: Thank you, Your Honor.

11 The defendant claimed that a person named
12 Ferrell downloaded all 9,000-plus videos of child
13 pornography on to all the different devices literally the
14 night before the search warrant was executed.

15 MR. MARCHESE: Objection. Misrepresenting the
16 facts.

17 THE COURT: This is just a statement. It's not
18 evidence nor argument. It's just the information that the
19 government plans and believes that they are going to be
20 able to demonstrate with the trial presentation.

21 Go ahead, Ms. Roohani.

22 MS. ROOHANI: Thank you.

23 Aside from the fact that it would be virtually
24 impossible to download 9,000-plus videos on to nine
25 different devices, the evidence will show that that was a

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1 lie.

2 The second charge is receipt. And there are
3 clear indications from the chats on various platforms,
4 including GigaTribe and Skype, that the defendant was
5 interested in child pornography and was actively trying to
6 obtain it.

7 He shared his password to his GigaTribe folders
8 not only with the undercover agent but also with other
9 friends on GigaTribe.

10 In exchange he asked for their passwords. And
11 he knew exactly what he was asking for based upon their
12 user names. For example, the defendant asked the
13 undercover agent, whose user name is pedotraderjoe, which
14 stands for pedophile trader Joe, for the password to the
15 undercover's GigaTribe folder numerous times.

16 In addition, the evidence will show partially
17 downloaded pornography, child pornography, from the Ares
18 peer-to-peer program on numerous devices.

19 And then, of course, there are the literally
20 thousands of images and files of child pornography in the
21 defendant's possession that did not magically appear. The
22 only natural inference is that the defendant received these
23 files and that he received them from the Internet.

24 Third and fourth are the distribution and
25 advertising counts which I'll discuss together.

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1 To better explain the evidence relating to these
2 two counts, I'm going to give you a little bit of minimal
3 context on how the GigaTribe platform works.

4 Sergeant Dennis Carry, who is trained and does
5 training on the GigaTribe platform, will go much more in
6 depth.

7 Like other peer-to-peer programs that Your Honor
8 might be familiar with, GigaTribe lets users download files
9 from one another. But there is a couple of unique features
10 about the GigaTribe platform that are interesting and
11 relevant to this case.

12 First is that to be able to download from each
13 other the two people have to be friends on GigaTribe. So
14 unlike other peer-to-peer networks where if I wanted to
15 download a file I could just search from a file name and
16 download it from anybody offering that file, that's not
17 possible on GigaTribe. You would have to be friends with
18 the person to be able to see their files or to be able to
19 download from them.

20 Second, you have to have a password to the
21 friend's folders to be able to see what's in those folders
22 or to be able to download from those folders.

23 So this means that the users have to have
24 realtime contact to obtain passwords, either through the
25 GigaTribe chat or through some other platform, and then

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1 they have to share those passwords to be able to see the
2 files.

3 And, third, once you've obtained the password on
4 GigaTribe, you can look into the friend's folder and see
5 every single file that's in that folder. In effect, it
6 gives the user notice of what's available for download, and
7 it allows the user to pick and choose what, if anything,
8 they want to download.

9 So briefly I'll explain how this case was
10 initiated. In August of 2015, the undercover task force
11 officer with the user name pedotraderjoe was accepted as a
12 friend into the GigaTribe network of lars45.

13 On August 4th, lars45 initiated a contact with
14 pedotraderjoe through the GigaTribe chat function and gave
15 pedotraderjoe the password to lars45's three locked shared
16 files titled "AAA," "BBB," and "Girls."

17 Lars45 also asked for pedotraderjoe's files and
18 the password to the folders but was never actually given
19 that password.

20 The task force officer went into the files and
21 saw that each folder had names -- file names indicative of
22 child pornography.

23 Then, about a month and a half later, on
24 September 14th, 2015, the task force officer again logged
25 in to GigaTribe and saw that lars45 was online. This time

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1 the task force officer downloaded files from each of those
2 three folders, AAA, BBB, and Girls, using the password that
3 had been previously provided by lars45.

4 Then using law enforcement software, the task
5 force officer was able to determine the IP address of
6 lars45, and law enforcement was also able to determine that
7 that IP address was associated with the defendant's home
8 address here in Las Vegas.

9 A search warrant was obtained and executed. And
10 that resulted in the collection of 38 devices throughout
11 the house, nine of which had child pornography.

12 So I'm going to talk for a minute about how do
13 we know that it was the defendant.

14 First, the e-mail address associated with the
15 lars45 GigaTribe account is larsschmidt22@hotmail.com. The
16 defendant admitted that larsschmidt22@hotmail.com was his
17 e-mail account and that he created that account 10 years
18 ago in Germany.

19 The defendant also admitted that the lars45
20 GigaTribe user name is his account.

21 Then we have actual e-mails from the
22 larsschmidt22@hotmail.com account. One of the e-mails is
23 from GigaTribe confirming that the lars45 account is, in
24 fact, associated with the larsschmidt22@hotmail.com
25 account.

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1 In one e-mail chain the defendant first signs
2 his name as lars45 and two e-mails later in the same chain
3 signs his name as Jan, which, of course, is the defendant's
4 first name.

5 In another e-mail he signs his name as lars45
6 and identifies himself in an attached picture as the one on
7 the left. When you look at the picture, the one on the
8 left is the defendant.

9 There's an e-mail in a Hotmail account that ties
10 the defendant to the same user name that Your Honor will
11 hear about that had certain Skype chats. That user name is
12 larsusa22. On the Skype chats, the defendant used
13 larsusa22 to exchange the password for the lars45 GigaTribe
14 account containing the child pornography in exchange for a
15 live sex show between a father and his daughter.

16 On the Hotmail e-mail that connects the Skype
17 chats and the Hotmail we have the defendant purchasing
18 something from a website called sketchysex.com. The e-mail
19 was sent to larsschmidt22@hotmail.com, and it thanked Jan
20 Fuechtener for his purchase. It showed the user name as
21 larsusa22, which is, of course, the same as the Skype
22 account.

23 And then when cross-referencing that e-mail with
24 the defendant's credit card statements, we see that that
25 purchase was actually made by the defendant's credit card.

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1 There's also Grindr profiles and chats
2 associated with the defendant's e-mails, janrouven@aol.com
3 and larsschmidt22@hotmail.com, and in those two Grindr
4 profiles the defendant identifies himself as both Jan and
5 lars45.

6 In sum, the evidence will show that the
7 defendant, Jan Fuechtener, is larsschmidt22@hotmail.com,
8 janrouven@aol.com, lars45 on GigaTribe, and larsusa22 on
9 Skype.

10 The evidence will also show that the defendant
11 possessed, received, distributed, and advertised child
12 pornography.

13 Thank you.

14 THE COURT: Thank you.

15 Mr. Marchese, would you like to make an opening
16 statement now, or do you want to -- or, Mr. Durham, or
17 would you like to wait until after the close of the
18 government's case?

19 MR. MARCHESE: Your Honor, we'll reserve, with
20 the Court's permission.

21 THE COURT: All right.

22 MR. MARCHESE: Thank you.

23 THE COURT: No problem.

24 You may call your first witness.

25 MS. ROOHANI: Thank you, Your Honor. The

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1 government calls Sergeant Dennis Carry.

2 THE COURT: And just to be clear, did you decide
3 whether or not you wanted to invoke the Exclusionary Rule
4 or not? You don't have to. It's up to you. But if
5 anybody wants to, let's make it clear.

6 MS. ROOHANI: Yes, Your Honor. We would.

7 MR. MARCHESE: And we would concur.

8 THE COURT: All right.

9 (Pause in the proceedings.)

10 THE COURT: Ms. Roohani, do you plan to use the
11 projector, are you or just going to have the information
12 directly on the television screen?

13 MS. ROOHANI: It's our -- we would hope to be
14 able to put it on the television screen. If there's some
15 type of malfunction, then we might need to use the
16 projector.

17 THE COURT: All right. Well, the projector, I'm
18 told, is not working as properly as it should, so we
19 actually have someone here from IT who is going to come in
20 and take a look at it. I wasn't sure if you needed to use
21 it.

22 Do you mind if Shawn just comes up and sees if
23 there's something simple he can --

24 MS. ROOHANI: That's perfectly fine with us,
25 Your Honor.

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1 THE COURT: Hopefully it's just not plugged in
2 right or something. Let's see. It was working fine last
3 week.

4 You may go ahead and step up. Remain standing
5 so we can swear you in.

6 COURTROOM ADMINISTRATOR: Please raise your
7 right hand.

8 You do solemnly swear that the testimony you
9 shall give in the cause now before the Court shall be the
10 truth, the whole truth, and nothing but the truth, so help
11 you God?

12 THE WITNESS: Yes, I do.

13 COURTROOM ADMINISTRATOR: Thank you, sir.

14 Please state and spell your full name for the
15 record.

16 THE WITNESS: Dennis Carry. D-e-n-n-i-s
17 C-a-r-r-y.

18 MS. ROOHANI: Sorry, your Honor.

19 THE COURT: No, that's fine.

20 DENNIS CARRY

21 called as a witness on behalf of the
22 Government, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. ROOHANI:

25 Q. Sergeant Carry, who is your employer?

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1 A. The Washoe County Sheriff's Office.

2 Q. And how long have you been employed by the Washoe
3 County Sheriff's Office?

4 A. Almost 21 years.

5 Q. What are your current duties and responsibilities?

6 A. I'm the supervisor of the cyber crime unit. I work
7 supervising the Internet Crimes Against Children Task Force
8 in the north, computer forensics, and I am an active task
9 force officer with the FBI's Child Exploitation Task Force.

10 Q. Have you held any other positions within the police
11 department?

12 A. I've worked various positions at the sheriff's
13 office, from detention to patrol detectives, before I was
14 promoted in place as a supervisor of detectives.

15 Q. Can you tell us a little bit about your formal
16 education?

17 A. I have an associates degree from Truckee Meadows
18 Community College in addition to other -- multiple other
19 college classes, and then several professional classes.

20 Q. Okay. Have you received any specialized training in
21 general computer forensics?

22 A. Yes, I have.

23 Q. When and where?

24 A. I've received close to a thousand hours of incident
25 response training and computer forensics training ever

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1 since 2004. And it's been continual until just recently
2 also.

3 Q. Okay. Have you received any specialized training in
4 file sharing programs?

5 A. Yes, I have.

6 Q. And when and where were those?

7 A. I've received file sharing training since
8 approximately 2007, 2008. It's been continual. I'm an
9 instructor for the Internet Crimes Against Children Task
10 Force, and I instruct both state, local, and federal and
11 international law enforcement in the use of file sharing
12 software.

13 Q. What specific file sharing software do you instruct
14 on?

15 A. I instruct on the Gnutella file sharing network,
16 the --

17 THE COURT: Wait. Go back. Could you please
18 repeat that again.

19 THE WITNESS: The Gnutella file sharing.

20 THE COURT: Gnutella. Okay.

21 THE WITNESS: The eDonkey file sharing network,
22 BitTorrent file sharing network, Ares file sharing network,
23 and GigaTribe. And also other file sharing that's not as
24 commonly known as those types of networks.

25

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1 BY MS. ROOHANI:

2 Q. Such as?

3 A. Dropbox, SkyDrive, Google Drive. Other online cloud
4 storage file sharing.

5 Q. Did those trainings include instruction on the
6 process of downloading the programs?

7 A. Yes, they do.

8 Q. Did they include instruction on the setup cost as
9 for those programs?

10 A. Yes.

11 Q. Did it include instruction in the sharing
12 capabilities of each of those programs and how they are
13 different from each other?

14 A. Yes.

15 Q. Did it include instruction on other aspects, such as
16 chat functions, nonshare functions, et cetera?

17 A. Yes.

18 Q. Okay. Did your training result in you receiving
19 certain qualifications for the different file sharing
20 programs?

21 A. Yes.

22 Q. Okay. I'm going to focus on two.

23 Did you receive certain qualifications regarding
24 the GigaTribe peer-to-peer network?

25 A. Yes.

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1 Q. What were those qualifications?

2 A. When I was initially trained on it, several years
3 back, after training on it, using it, helping develop the
4 law enforcement tools and beta testing the law enforcement
5 tools to investigate, I've been an instructor of GigaTribe
6 and all of its functions for several years.

7 Q. Okay. Are you -- did you receive certain trainings
8 or receive certain qualifications on the Dropbox platform?

9 A. Yes.

10 Q. And the Ares platform?

11 A. Yes.

12 Q. Can you explain the Dropbox platform for us first.

13 A. Dropbox is a cloud storage sharing program. It
14 doesn't require a user to share or anything like that.
15 People can use it for personal use, and only for personal
16 use, but there are specific nuances that allow you to share
17 with other users.

18 I've met with Dropbox, the company. I've
19 learned specific details about what can and can't occur.
20 And then I also instruct law enforcement in the use of
21 Dropbox, what evidence can be recovered from Dropbox and
22 specific things with Dropbox as far as forensically when
23 it's installed on a computer.

24 Q. Okay. And you also mentioned Ares. Can you talk
25 about your qualifications on the Ares platform?

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1 A. I've been an instructor in the Ares peer-to-peer
2 file sharing program for several years. And I have worked
3 with the developers who have developed the law enforcement
4 tools. We've beta tested those tools and different
5 changes. And been using that network for, again, several
6 years.

7 Q. Have you previously testified in federal or state
8 court as an expert witness regarding general computer
9 forensics?

10 A. I have.

11 Q. Approximately how many times?

12 A. Close to -- somewhere between six and ten times.

13 Q. Have you ever not been qualified?

14 A. No.

15 Q. Have you previously testified in federal or state
16 court as an expert regarding file sharing programs?

17 A. I have.

18 Q. How many times?

19 A. Roughly the same amount of times.

20 Q. Have you ever not been qualified in that regard?

21 A. No.

22 Q. Have you ever previously testified in federal or
23 state court as an expert witness regarding peer-to-peer
24 networks?

25 A. I have.

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1 Q. Approximately how many times?

2 A. Roughly the same, but I would say more often
3 specifically peer-to-peer file sharing programs.

4 Q. Have you ever not been qualified as an expert in
5 peer-to-peer networks?

6 A. No.

7 MS. ROOHANI: Your Honor, I would ask for
8 permission to tender the witness as an expert in general
9 computer forensics, file sharing, as well as peer-to-peer
10 networks.

11 MR. SANFT: No objection, Your Honor.

12 THE COURT: All right. So Sergeant Carry will
13 be permitted to testify as an expert related to general
14 forensics computer operations, the file sharing of programs
15 and peer-to-peer network.

16 MS. ROOHANI: Thank you, Your Honor.

17 BY MS. ROOHANI:

18 Q. Sergeant Carry, what evidence have you reviewed in
19 this case?

20 A. I've reviewed evidence from Dropbox and also various
21 reports and artifacts concerning the GigaTribe account and
22 some other accounts involving chats.

23 Q. Okay. What is GigaTribe?

24 A. GigaTribe is what I would refer to as a hybrid
25 file-sharing application.

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1 When I say "hybrid," unlike other peer-to-peer
2 file sharing applications, where a user typically enters a
3 search term to find something and downloads, GigaTribe is
4 more enhanced, and it involves sort of a social networking
5 side, where you have to actually engage in some sort of
6 friendship and accept friendships, and you can share files
7 among one another and also engage in chats with
8 individuals.

9 Q. Okay. How would two people become friends on
10 GigaTribe?

11 A. You can befriend people several ways.

12 One, after you install GigaTribe, it actually
13 has an invite button that you can search for users. Most
14 people search for a user with some word that will be
15 similar to what they're looking for.

16 But on that search page, on that popup window,
17 you also have the ability to look at people who you may
18 have contact or in a contact list, such as your e-mail.
19 And you can send them all invitations and actually see if
20 they're already a GigaTribe user.

21 The other way you can friend people is by going
22 through what they call the tribes. It's a web portal of
23 GigaTribe, and it allows you to search for people based on
24 things you might have in common. There's a romance
25 section. There could be a sports section.

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1 And once you go into those groups, you see
2 members that are in those groups, and you can friend them
3 that way. But you have to send them an invitation or they
4 have to send you an invitation in order for you to become
5 friends.

6 Q. Can a user password protect their files on
7 GigaTribe?

8 A. Yes, they can.

9 Q. And how do they do that?

10 A. When the user -- once they install GigaTribe, they
11 have the ability to add shareable folders. When they
12 select that option, they would navigate to where they --
13 what folder they want to share.

14 And then they have -- depending upon the version
15 of GigaTribe, they have options for how many files they
16 want to be in there, if they want to password protect the
17 folder, and if they want to allow for recursive sharing,
18 which is the ability to search folder within folder within
19 folder.

20 Q. Okay. And how can people obtain passwords from one
21 another for those folders?

22 A. Most of the time -- with my experience actually
23 using GigaTribe in a law enforcement role and also
24 interviewing subjects of investigations, most of the time
25 passwords are shared via the chat function of GigaTribe.

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1 Q. Okay. There's an evidence binder up there. Could
2 you take a look under tab 44.

3 I'm sorry. Look at the government's exhibit
4 binder, which is the other one.

5 It's been marked for identification purposes as
6 44. And it's a multipage file. So if you could go through
7 that and tell me if you recognize it.

8 A. I do recognize it.

9 Q. What is it?

10 A. This is actually a -- I guess printed pages of a
11 PowerPoint that I completed to explain how GigaTribe works.

12 Q. Okay. Is that some of the -- are some of these
13 slides included in the trainings that you do on GigaTribe?

14 A. Yes.

15 Q. And did you provide this to me as part of what your
16 testimony was going to be about today?

17 A. I did.

18 Q. Okay. Can you explain to me how a person would
19 obtain the GigaTribe software?

20 A. GigaTribe, the actual software, is free. They can
21 download it from the Internet usually just by going to
22 GigaTribe.com. Or you can click on to download.

23 Q. Are there paid versions of GigaTribe?

24 A. There's a paid account. The software is the same.
25 Just once you pay for it, which is called the ultimate

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1 account, it gives you enhanced access to features within
2 GigaTribe.

3 Q. So what are some of those enhanced features?

4 A. You can have more friends, where the free version
5 limits the amount of friends that you have.

6 The paid version also allows for what we call
7 multiple source downloads. You can download from multiple
8 people at one time and actually get faster downloads.

9 And you also have a web portal access, you
10 actually don't have to use the application, you can log in
11 via the web into your account.

12 And it also allows for more restrictive or
13 enhanced restrictions when it comes to your folders, your
14 shared folders.

15 Q. And what are some of those enhanced -- excuse me.
16 What are some of those enhanced restrictions on the
17 folders?

18 A. The password protection, different types of access.
19 It just -- in order to use GigaTribe to its full
20 functionality, you would need to be an ultimate user.

21 Q. Okay. When a person is setting --

22 THE COURT: Can I just interrupt -- I'm sorry --
23 before we go on.

24 So is the password protection not available on
25 the free version of GigaTribe, only on the ultimate

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1 version?

2 THE WITNESS: Correct.

3 THE COURT: Okay. Thank you.

4 THE WITNESS: I should -- to clarify that, the
5 option is there, but it doesn't let you do it.

6 BY MS. ROOHANI:

7 Q. Okay. So to be able to password protect the
8 folders, the person would have to have an ultimate
9 subscription?

10 A. Yes.

11 Q. Okay. When a person is setting up a GigaTribe
12 account, what type of information do they have to give to
13 GigaTribe?

14 A. They have to create a user name. They have to
15 provide an e-mail address for -- because you'll receive a
16 validation link or a verification link. And then just
17 whatever screening you choose.

18 Q. Is it possible to set up GigaTribe without inputting
19 an e-mail?

20 A. No, not at this time.

21 Q. And is that the same for the ultimate subscription,
22 you have to put in an e-mail?

23 A. Yes.

24 Q. Okay. And you mentioned a confirmation e-mail.
25 Would a user receive a confirmation e-mail from GigaTribe?

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1 A. Correct. You wouldn't be able to actually --
2 although you can launch GigaTribe, you wouldn't be able to
3 engage in the friend invites without clicking on the
4 verification first to unlock it.

5 Q. Okay. And does that verification e-mail go to the
6 e-mail that the person used to set up their GigaTribe
7 account?

8 A. Yes, it does.

9 Q. Okay. So once a person downloads GigaTribe and gets
10 signed up and set up, what would the start screen look
11 like?

12 A. Once they launch it, they will see -- it's kind of
13 like a welcome-to-the-network page. There will be
14 information about the network itself, whether there is any
15 kind of updates or anything like that.

16 It's more like a news feed, I guess you could
17 say.

18 Q. Are there any specific tabs that a person would see
19 to be able to launch different aspects of GigaTribe?

20 A. There's actually multiple tabs. There's a tab for
21 their profile. There's a tab for their shared folders.
22 There's a tab for essentially upload/download activity.

23 And then on the left-hand side you would see
24 your friend list and whatever groups they may be in.

25 And there's also the individual tabs that would

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1 allow chat.

2 Q. In that profile tab that you talked about, what
3 information would be typically shown on that tab?

4 A. Whatever information you put in there. Typically
5 it's going to show your home location. It's going to show
6 your name and whatever you chose to, I guess, voluntarily
7 provide as far as a profile.

8 Q. And a person can limit the information that they
9 allow to show on that profile tab too --

10 A. Yes.

11 Q. -- is that correct? Okay.

12 In the tab that you mentioned, folders, what
13 would a person typically see if they clicked on their
14 folders tab?

15 A. Well, initially you wouldn't have anything until you
16 actually add folders to be shared. But once a user does
17 add folders, then they would see their shared folders
18 within there.

19 Q. Okay. And you mentioned there's an upload/download
20 tab. Once a person clicked on that, what would be shown on
21 there?

22 A. The activity tab actually would allow the user to
23 see the upload and download progress of what's occurring.

24 So if people are downloading from them, they
25 could see that. If you are downloading from others, you

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1 would see the progress -- progress bars.

2 Q. Okay. And you mentioned there's a friends tab on
3 the left. Would that be the place where a person could
4 invite friends from?

5 A. That's actually the tab where you -- those are the
6 invitations that have been sent and accepted. On the top,
7 towards the top of the screen, there's an add user, a
8 search for user button.

9 Q. Okay. I want to focus for a minute on that folder
10 tab that we talked about. Can the user customize their
11 folder settings?

12 A. They can customize -- well, as far as the -- what
13 they see or other people?

14 Q. Let's answer both. Let's go with the first one
15 first and then the second one.

16 A. So regardless of what they're looking at in their
17 folder tab, they have the ability, just like any other
18 folder viewer in online computer, they can have either a
19 detailed, an icon view, a list view. In every one of those
20 views they see file names. The file names are shown
21 regardless of the view.

22 If they have a folder within a folder, they
23 would initially only see the first folder. They'd have to
24 go inside that to then see subfolders.

25 Most of the time if -- in my experience, I have

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1 not found people that were in list view but they were
2 always in icon view so you could see the file names and
3 usually thumbnails.

4 Q. Okay. On the folder settings that a person can set
5 up on GigaTribe, can they limit who can download from them?

6 A. They can in the sense that in order to download in
7 the first place you have to be a friend. I would have to
8 send an invite to somebody, they would have to accept it,
9 and then I would be able to view the folders that they
10 allow me to view.

11 They can -- a user can group users into
12 different categories. So you can restrict folder access to
13 certain groups. If a user is not doing that, then they can
14 see all your folders that you are sharing. They may not be
15 able to access them if they're password protected, but if
16 they're not password protected, once a user clicks on their
17 friend on the left-hand side, they would see their folders,
18 and then they could access those folders.

19 Q. So if a friend wanted to see what was inside of each
20 of those folders and not just see the folder name, would
21 they need a password?

22 A. If it's password protected.

23 Q. Okay. And can a user name the folders?

24 A. Yes.

25 Q. Can a person change the password for those folders?

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1 A. They can change the password and they can change the
2 folder name.

3 Q. And can they limit access to individuals? So, for
4 example, if they gave somebody a password, they decide they
5 don't want that person to have access anymore, can they
6 change the password to somehow limit that person's access?

7 A. They can either change password to limit it, or they
8 can move that user to a different group where that group
9 doesn't have access to that folder.

10 Q. Okay. All right. So let's assume that I want to
11 get a password to a folder from a friend. What would I
12 have to do?

13 A. Normally the most common way is engaging in a chat
14 with that friend, with that user.

15 When you send an invite to somebody and they
16 accept it, then you can engage in conversation back and
17 forth within the GigaTribe program. Although they may chat
18 outside of the program via e-mail or some other means, we
19 usually see it in the program. And they chat back and
20 forth. And typically a user will either ask for a
21 password, or it may just voluntarily be provided to
22 somebody by the owner of that folder.

23 Q. Okay. And if they wanted to get into the folder and
24 the folder was password protected, what would appear on the
25 screen?

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1 A. When they tried to get in the folder, if they don't
2 have a password, a password window would launch and they
3 would enter the password. Once that occurs, they would be
4 inside the folder.

5 Q. What if I put in a password on -- today, and
6 tomorrow I want to go back and get into that folder again.
7 Do I need to reinput the password?

8 A. You do not.

9 Q. So does the password save somehow in the GigaTribe
10 program?

11 A. The majority of the time, yes.

12 Q. And it would -- I wouldn't have to reinput it unless
13 the password had been changed --

14 A. Correct.

15 Q. -- is that correct? Okay.

16 So once we're inside of the folder, we've
17 inputted the password, we've gotten access to the folder,
18 what would we see?

19 A. You would see all the file names. They would be
20 shown to you. File names can verify in these types of
21 investigations. But you would see the file names, and then
22 most of the time you would see an icon, a thumbnail as to
23 what it may be.

24 But it depends on whether it's a picture, a
25 video, or whatever type of file it might be.

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1 Q. And is it possible, like on a typical computer, can
2 you change the view; so you can have thumbnails or details
3 or icons, whatever it might be?

4 A. Yes, you can. In the top left corner of what you're
5 looking at on the screen, there's a display option to
6 change those.

7 Q. Okay. If I choose to download a file, is there a
8 place on my GigaTribe where I can see where the file is
9 being downloaded?

10 A. Yes.

11 Q. Where is that?

12 A. It's the progress tab to the activity fields. You
13 can look at that.

14 Q. And can I also see what has already been downloaded?

15 A. Yes, you can.

16 Q. And where would that appear?

17 A. You have a folder when you install it for your
18 GigaTribe downloads. Although you can name it whatever you
19 want. But that would be the location that your downloads
20 go to when they're completed.

21 Q. And where does GigaTribe default save its files?

22 A. In your GigaTribe downloads.

23 Q. Okay. Let's talk about the chat function for a
24 minute.

25 Does GigaTribe save the chats that happen in the

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1 program?

2 A. It does most of the time on -- GigaTribe does run on
3 multiple computer platforms, Windows and Mac.

4 But the chats themselves are archived. They do
5 save within -- on computer.

6 Q. Where do they save to?

7 A. It depends on the -- the operating system. But
8 they're usually in a -- what we would call a configuration
9 folder. The average user wouldn't typically see that,
10 unless they know where to look. Forensically we know where
11 to look. But they would be in the application
12 configuration folder.

13 Q. Do they get saved to the computer, or do they get
14 saved to a cloud somewhere?

15 A. The computer.

16 Q. Okay. And can you delete chats if you knew where
17 they were saved to?

18 A. Yes, you could.

19 Q. Okay. Speaking about chats, during the course of
20 your career, have you read many chat messages?

21 A. I have.

22 Q. And based upon your training and experience, are you
23 familiar with drug terminology?

24 A. I am.

25 Q. How?

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1 A. I've been in law enforcement 21 years. A detective
2 since 2003. I've come across drug cases in patrol, and the
3 jail prior to that. But we actively work drug
4 investigations.

5 In my role as a supervisor at my agency, I --
6 I'm not just a supervisor of the cyber crime unit, but
7 detectives in general, which includes drug task forces and
8 working with those drug task forces.

9 But predominantly, because we are a computer-
10 forensic unit, also, we do all of the phone forensics and
11 computer forensics for the drug investigations. And those
12 are almost always filled with discussions about drugs back
13 and forth and text messages and other types of
14 communications.

15 MR. SANFT: Your Honor, I'm going to object
16 based on relevancy. I'm not quite sure how drugs --

17 THE RECORDER: Mr. Sanft.

18 MR. SANFT: -- into this particular --

19 THE COURT: Well, there was a motion in limine,
20 so I think that's the area that we're getting into about
21 one particular chat that was -- Ms. Ellie -- Ms. Roohani is
22 shaking her head yes. So --

23 MS. ROOHANI: That is correct, your Honor.

24 THE COURT: -- I think that I'm remembering this
25 correctly.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 But I'll let you go ahead, Ms. Roohani, you can
2 respond to the objection.

3 MS. ROOHANI: And, Your Honor, that is correct.
4 And I am going to limit it to what the Court's instruction
5 was in that pretrial order. We're not going to go outside
6 the scope of what the Court ordered in that pretrial order.

7 THE COURT: All right. The objection is
8 overruled.

9 Before we go there, can I just clarify.

10 MS. ROOHANI: Certainly.

11 THE COURT: For the chats, how do the people who
12 are chatting identify themselves? Is it by the profile,
13 the names? So, you know, could you be Dennis the Menace,
14 or would you automatically be Sergeant Carry? Do you give
15 yourself a name when you're chatting and that's what people
16 see?

17 THE WITNESS: It's your profile name. So
18 whatever you choose as your profile name when you're
19 setting up the account, that is how you'll be identified on
20 the left-hand side.

21 So if -- for example, if I wanted to make my
22 profile name Las Vegas, which would probably be taken
23 already, but if I was able to get that profile, that is
24 what other users would see.

25 I could create a new account and get a new

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1 screen name. But whatever screen name I choose is what
2 they will see. And they see it on the left-hand side. So
3 when you're engaging in a chat back and forth, it's via the
4 screen name.

5 THE COURT: And then when you go into the
6 configuration folder, is it reflected the same, it's the
7 profile user name?

8 THE WITNESS: The configuration folder actually
9 initially is a -- it's a numerical identification. But
10 then forensically you can examine and actually see the
11 specific user name.

12 But to the average user who is just chatting,
13 all they see is the screen name.

14 THE COURT: But when you go into the
15 configuration folder you see numbers that you can match up
16 later too. It's not clear when you're looking in the
17 configuration folder that there are GigaTribe users that
18 are chatting that's been preserved?

19 THE WITNESS: Correct. To look at -- to look at
20 the application folder just with the naked eye, you
21 wouldn't really see much of relevance. But to see it
22 through forensic tools, you're able to decode and actually
23 see what it is.

24 THE COURT: Okay.

25 THE WITNESS: There are -- there were two

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1 different versions of GigaTribe. Version -- well, there's
2 several versions, but version 2 versus version 3 where it
3 changed where things were and how they're decoded. But
4 forensically with the tools we examine, we see the screen
5 names. They are identified in addition to the user account
6 number.

7 THE COURT: Okay. Great. Thank you.

8 MS. ROOHANI: Your Honor, could I follow up on
9 that?

10 THE COURT: Sure.

11 BY MS. ROOHANI:

12 Q. So if a person went into the configuration folder,
13 let's assume my name is Ellie Roohani, which is my name,
14 and that's my user name, that would not appear in the
15 configuration folder. There's some number that GigaTribe
16 assigns to that user name that would appear in the
17 configuration folder; is that correct?

18 A. To the naked eye.

19 Q. Right. So if a person wanted to delete a certain
20 chat, they wouldn't know that it's the Ellie Roohani chat,
21 they would just know that the number is what was there; is
22 that correct?

23 A. For the folder, yes.

24 Q. For the folder?

25 A. The easiest way to delete a chat is actually within

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1 the GigaTribe user interface. It lets you delete your
2 conversations. There's just a -- there's a button for
3 that. That's how most people would do that.

4 There certainly could be forensic wiping
5 program -- what we call wiping programs or computer
6 cleaning programs that are set up and they eliminate that
7 information.

8 THE COURT: Would deleting the chat on GigaTribe
9 also delete it from the configuration folder, or do you
10 need to take an additional step?

11 THE WITNESS: Unfortunately, the reality with
12 that is it depends. And it depends on your computer
13 permissions, how well -- what version of Microsoft Windows
14 you might be using.

15 In theory, it should delete it, because that's
16 where GigaTribe reads it from. But I've seen it and we've
17 tested where it doesn't.

18 THE COURT: Okay.

19 BY MS. ROOHANI:

20 Q. And I want to circle back to the -- we just talked
21 about drug terminology.

22 Based on your training and experience, are you
23 familiar with child exploitation terminology?

24 A. I am.

25 Q. And how are you familiar?

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1 A. I've been working child exploitation cases since
2 2003. I've been involved in the Internet Crimes Against
3 Children Task Force since the end of 2003, 2004.

4 I teach chat investigations, chat techniques.
5 And as a supervisor, I review chats that our investigators
6 conduct and also chats that we examine forensically, the
7 various terminology.

8 One of the most difficult things with these
9 types of investigations for child exploitation
10 investigations is actually teaching people the proper
11 terminology, wording, and use to portray yourself as the
12 user -- as a normal user to that subject.

13 Q. So are you also familiar with child exploitation
14 terminology in relation to drug terminology being used
15 together?

16 A. Yes.

17 Q. Okay.

18 MS. ROOHANI: Your Honor, I would ask for
19 permission to tender Sergeant Carry as an expert in drug
20 terminology as it relates to child exploitation cases.

21 THE COURT: Any objection?

22 MR. SANFT: Outside of what was stated earlier
23 in court, no, Your Honor.

24 THE COURT: All right. So the objection earlier
25 was to the relevance of the testimony.

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1 But as to Sergeant Carry's qualifications to
2 testify as an expert in the child exploitation drug
3 terminology, do you have any objection to that?

4 MR. SANFT: No, Your Honor.

5 THE COURT: All right. So he'll be qualified.

6 MS. ROOHANI: Thank you, Your Honor.

7 BY MS. ROOHANI:

8 Q. Sergeant Carry, based on your training and
9 experience, if you saw the word, and spelled like this,
10 y-n-g in a chat, what would that mean?

11 A. That would mean young.

12 Q. And does that have the same meaning as the word
13 young, spelled y-o-u-n-g?

14 A. Yes, it would.

15 Q. Okay. If you saw the word -- the words young porn,
16 spelled y-o-u-n-g space p-o-r-n, what would that refer to?

17 A. Young porn, in the -- in my experience and what we
18 see, is usually anywhere from very young, could be infant,
19 toddlers, teens, tweens, to very young, usually under 20.

20 Q. Okay. If a person said, quote, that he used to play
21 with a few boys, unquote, that he baby-sat for, what age
22 range would that refer to?

23 A. I would usually want to look at, like, the whole
24 context of it, because certainly one text message or
25 communication can kind of change things a little bit.

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1 But in the aspect of child exploitation or a
2 discussion of that, it would certainly mean very young, and
3 certainly baby-sitting would involve somebody who is not at
4 the age where they would be left alone or be capable to be
5 left alone.

6 Q. And in the context of used to play with a few boys,
7 that he baby-sat for, would that refer to an adult?

8 A. No.

9 Q. Based on your training and experience, what would
10 the statement, "shall we drug a young?" what would that
11 mean?

12 A. Based on my experience and training, we would
13 typically see that with young teens, under -- usually
14 under 18. We see it heavily involving, like, runaways.

15 But it would mean some -- typically mean some
16 sort of date-rape drug in our experience, whether it's GBH,
17 ecstasy, or something else that would lower a person's
18 inhibitions.

19 Q. So drug in that case would refer to some type of
20 drug that would inhibit the child's ability to do what?

21 A. To stop something, prevent something. We see that
22 very predominantly today.

23 Q. And young in that context, would that only mean a
24 child?

25 A. Well, I would say far younger than whoever is

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1 discussing the chat. I couldn't say exactly the exact age.
2 But based on the context, it would usually mean somebody
3 under 18.

4 Q. And have you ever known the term young to refer to a
5 legal adult?

6 A. I have in a sense of around 18, 17. But there's
7 usually more context -- we often see barely legal or some
8 other wording to show that it's an adult.

9 But in my experience, most of the
10 communications, the type of investigations we conduct, it's
11 usually an underage individual.

12 Q. And in the context of young in the same chat as a
13 person baby-sitting for someone, would that refer to a
14 legal adult?

15 A. I would absolutely think not.

16 MS. ROOHANI: Okay. Your Honor, I have no
17 further questions for Sergeant Carry at this time. I would
18 pass the witness.

19 THE COURT: All right.

20 Cross?

21 MR. SANFT: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. SANFT:

24 Q. Is it Sergeant Carry?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. All right. And just to make sure we're clear, your
2 testimony is that you actually are employed by Washoe
3 County as a police officer with the county?

4 A. Yes, I am.

5 Q. Okay. You've testified quite a bit about the issue
6 of GigaTribe. But before I get into that, you've talked a
7 little bit about Dropbox as well.

8 A. Uh-huh.

9 Q. Is that a yes?

10 A. Yes.

11 Q. Now, with regard to Dropbox, you had said that it's
12 not as common with regards to maybe child pornography or
13 exchange of child pornography on -- with the use of Dropbox
14 as it would be with GigaTribe.

15 Did I hear you correctly earlier?

16 A. No. Dropbox is very common to be used for child
17 pornography. It's extremely common actually today, or at
18 least being identified.

19 I was referring to Dropbox the way it works is
20 different than most other peer-to-peer programs. Dropbox
21 is cloud storage that you can share, and it's not a -- what
22 we call a traditional peer-to-peer because an item doesn't
23 come from an individual's computer directly, it comes
24 through the cloud storage.

25 Q. I see. So you upload a file, it goes into the

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1 cloud, and you can access that cloud from any device
2 anywhere, basically in the world, if you have Internet
3 access --

4 A. Yes.

5 Q. -- would that be a fair way to say it?

6 Would it be also fair to say as -- of course,
7 that GigaTribe is also the same type of way? Or is it done
8 locally? Is there -- if you access something on GigaTribe,
9 is it done through a local computer, or can you do that,
10 say, for instance, in Europe?

11 A. GigaTribe is different.

12 I like to use analogies when I explain these
13 programs because they're easier to understand.

14 So with GigaTribe, for example, and because it
15 involves friendships, it's kind of like -- I guess the
16 analogy I would use would be a picnic. People don't know
17 you're having a picnic unless you invite them to come over.

18 If they come over, you could have multiple
19 coolers. Some might have a padlock, some might be open.
20 They still had to be invited in to know the party -- that
21 the party's there to obtain something.

22 If they want in the folder that is padlocked or
23 password protected, you would have to provide that to them
24 in order for them to see what's inside and take what's
25 inside.

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1 When you're dealing with something like -- and
2 you can, as far as the technical side, you can access it
3 from anywhere.

4 But when you're doing a file transfer with
5 GigaTribe, you're getting it from that person's computer.
6 It has to be on, it has to be running, in order for you to
7 be able to complete the download.

8 Unlike Dropbox, where I can add files to
9 Dropbox, they could store it on Dropbox servers in addition
10 to my computer. When you share something from there, it's
11 actually coming from the cloud storage provider, not
12 directly from your computer at that time.

13 Q. I see.

14 A. So your computer doesn't have to be on in order for
15 somebody to obtain something from you, they just have to
16 have access to a folder that you provided to them.

17 Q. Okay. So, for instance, if I ever were to get on
18 GigaTribe, and I'm a -- I'm your friend, you would actually
19 have -- I actually have to look for you to be online in
20 order for me to share a document or a file with you?

21 A. Correct.

22 Q. Okay. So with regards to GigaTribe, you had said
23 that the issue with GigaTribe is that you have to be
24 friends; right?

25 A. Correct.

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1 Q. Based upon your training and experience, is it fair
2 to say that you know when people are added to a GigaTribe
3 account in terms of friends?

4 A. You know they become your friend because they either
5 sent you an invite or you sent them an invite, and then it
6 tells you whether or not it was accepted.

7 And on the left-hand side, when you were looking
8 at your friends list, it looks different than somebody who
9 actually is somebody who is your friend, versus invitation
10 sent. Invitations show in a different part of the list.
11 Your actual friends show where it says "friends."

12 Q. Okay. So, for instance, if you want to be my
13 friend, you find me online, you send an invention to me, it
14 could be sitting there for a day, a month, a year before I
15 choose to accept that particular friend request?

16 A. Correct.

17 Q. And once I do, then that's logged in as a user
18 contact that's been recognized by me?

19 A. I don't really know about what you mean by "logged."
20 You see on your list as far as -- I mean, you would be
21 notified, invitation accepted, and then you would see them,
22 they are now one of your friends.

23 Q. Right. So, for instance, if you were to look later
24 at some type of list indicating the activity that's going
25 on at GigaTribe, you would determine at that point, okay, I

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1 was accepted by Michael Sanft on this day at this time?

2 A. Yes.

3 Q. Okay. Now, with regard to downloads, if a download
4 occurs, and we've -- there's been some discussion about
5 file sharing, but we're talking it could be a small, say,
6 kilobyte type of document, it could be a large, say,
7 gigabyte of information, would that be fair to say? The
8 range is very wide ranging?

9 A. Correct. The types of files that could be shared on
10 GigaTribe are any type of file, virtually any size.

11 Q. So if a file is to be shared with an individual and,
12 say, for instance, you and I -- I want to share a file with
13 you, and we initiate the download, what shows up on
14 GigaTribe, the request and the acceptance of the file
15 starting or the end portion of the file is completed in
16 terms of its download?

17 A. No. To the normal user if I want to download
18 something from somebody's shared folder, I would double
19 click on it or right click and choose to download. I would
20 be able to look at the progress, but some people may or may
21 not do that. There's no requirement to do that.

22 Once it downloads -- once the download is
23 complete, it downloads to your GigaTribe download folder,
24 whatever you set it as.

25 So at that time, that's what you would have,

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1 just you're initiating the download and that you receive
2 it.

3 Q. Okay. And both of those items would actually be
4 stored in some log somewhere, either locally on computer or
5 somewhere on GigaTribe; would that be fair to say?

6 A. Well, in GigaTribe, there's not, like, evidentiary
7 logs on any kind of public version of GigaTribe that's
8 logging that information. Is it -- I don't know if that's
9 what you're referring to, or if you're referring to the
10 fact that I double clicked on it saying your download is
11 starting.

12 Q. Right.

13 A. You would see a download.

14 Q. Okay.

15 A. Yes.

16 Q. Now, in addition to that, your testimony was that
17 there's a chat function that occurs between parties?

18 A. Yes.

19 Q. If I were to be online and I wanted to chat with
20 you, if I -- unless you're not online, I can't, say, start
21 a chat with you; would that be fair to say?

22 A. You can send communications, and I guess they would
23 be there when the other person logs in if they're not
24 logged on at that time. Of course, for it to be two-way,
25 you -- one person has to be logged on at at least one time.

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1 It works best when both people are logged on at the same
2 time for communication back and forth. But you can
3 certainly send messages, and they'll be received later if
4 the person's not online.

5 Q. Okay. And your testimony with this Court is just --
6 in terms of you being certified as an expert, at least with
7 experience in analyzing these types of chats, would it be
8 fair to say that you're here only specifically as to
9 shorthand as typically used in chats, not necessarily in
10 terms of just, like, analyzing the chats in this case, for
11 instance?

12 A. Well, I would say I'm here to answer questions from
13 both sides, whatever that -- whatever that may be. I've
14 answered some that involve chat terminology in addition to
15 the program itself.

16 Q. Okay. Were you able -- at any point during the
17 course of your investigation preparation for this
18 particular trial, able to analyze, confirm chats of Jan
19 Fuechtener to the chats that you saw on GigaTribe?

20 A. I've analyzed chats that were from -- at least from
21 another program involving, I guess you would say, a mobile
22 based platform. I haven't analyzed the forensics that had
23 been provided, or whatever the forensic examiner has
24 recovered in relation to all the computer artifacts. I
25 haven't seen that.

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1 Q. Okay. But I want to be sure we're clear. What I'm
2 asking specifically is were you able to actually examine
3 the chats in, say, for instance, the linguistics? Because
4 you've talked a little bit about these shorthand
5 terminologies. Were you able to analyze known chats from
6 Jan Fuechtener versus the ones that you found or were asked
7 to analyze on GigaTribe?

8 A. I -- the chats that I've looked at, I wouldn't be
9 able to say specifically whose or what. I'm looking at the
10 actual context. I haven't conducted an interview. I
11 haven't looked at all the evidence.

12 So when you're saying specifically from an
13 individual, I would have to leave that to somebody else to
14 say that's who they were from.

15 Q. Fair enough. Now, if I were to be on GigaTribe
16 looking for child pornography, specifically, how does that
17 work? I mean, is there a group that says child pornography
18 and you click on that?

19 A. No. It's actually much harder to find. You have to
20 find people of similar interest.

21 You could have a lot of friends on GigaTribe and
22 some of them have nothing to do with child pornography, and
23 some do have something to do with child pornography.

24 Child pornography is typically found through
25 what we call keywords or phrases within that community that

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1 will likely return child pornography. It could be a lot of
2 different keywords.

3 We often come across, for example, PTHC is
4 preteen hard core.

5 There are typically words and phrases that do
6 not have any relevance that we know of to anything other
7 than child exploitation type of activity.

8 But usually an individual will befriend
9 individuals, either by the tribes, where they have similar
10 interests, such as romance. And if you were to go into the
11 romance section -- for example, I was doing an
12 investigation the other day, went into the romance section,
13 and one of the tribe groups was toddler rape. That's the
14 group name.

15 So based on my experience as an investigator, I
16 would expect that group to involve that.

17 It would be different if I went into a group
18 that said 49ers, where I would think that would be
19 involving football.

20 But all these groups, at least through the
21 tribes, are within areas that might be activities or
22 hobbies that you would navigate through and find
23 whatever -- whatever it is you're looking for.

24 We find groups that involve child pornography
25 and individuals involved with pornography often in a

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1 romance area with very specific terminology that we know or
2 expect to be involved with child exploitation.

3 Q. Now, with regards to the GigaTribe program, is there
4 a search bar that allows you to search the terms so you can
5 find these groups? Say, for instance, the 49ers, do you
6 type in in a search bar 49ers and look for it within the
7 program?

8 A. The GigaTribe program -- unlike other peer-to-peer
9 programs that may allow you to search for specific search
10 terms, GigaTribe does not do that. GigaTribe primarily
11 involves the social networking side, having the friends,
12 seeing what's in their folders.

13 You can -- you can conduct search terms through
14 the tribes, which is, I guess, a web portal or web page,
15 the best way I can explain it where you can conduct search
16 terms and those search terms might be relevant to one of
17 the groups that's in there.

18 Q. I see.

19 A. Or one of the users in one of the groups.

20 Q. Now, we've talked a little bit about signing up for
21 GigaTribe. And one of the things was the use of an e-mail
22 account.

23 A. Yes.

24 Q. Your testimony was that you sign up, there's an
25 e-mail that you put into your sign-up, and then that e-mail

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1 is used to certify the user to the GigaTribe account?

2 A. Yes.

3 Q. Okay. And in addition to that, your testimony is
4 that you go into your e-mail, you click on the certified
5 button, and then it says congratulations, or something
6 along those lines, you're now a GigaTribe user?

7 A. Yes.

8 Q. Okay. Now, did you ever, at any point, determine in
9 this case when the e-mail was sent for the GigaTribe
10 accounts with regards to the lars45 account to the time
11 that the person actually accepted the GigaTribe request?

12 A. No, I haven't looked at the forensic aspects as far
13 as what e-mail has been recovered or not recovered on what
14 device. E-mail is accessible from so many different
15 devices. But I haven't looked at any of that.

16 Q. Okay. And then, just finally, your testimony as
17 well with regards to the downloads or the uploads,
18 basically. Specifically in this case, I'm assuming that
19 you took a look at the evidence with regards to whether or
20 not my client was the person responsible for the GigaTribe
21 account; correct?

22 A. No. I haven't been asked to look at that.

23 Q. Okay. So your testimony here today is just kind of
24 a general overview of the GigaTribe account?

25 A. Yes.

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1 Q. Okay. Outside of that particular knowledge, do you
2 have any other knowledge with regards to the investigation
3 in this case?

4 A. I've read reports for the investigation, what
5 they've discovered, at least partially with forensics
6 relating to at least some devices. But I haven't seen a
7 full final report or anything like that.

8 Q. If a person -- if I were to first sign up for
9 GigaTribe, your testimony earlier was that automatically
10 GigaTribe would either actually look at your address book,
11 I would assume, and then look to see e-mail accounts on
12 there and see if maybe those people are users of GigaTribe
13 and then try to link the -- would that be a fair assessment
14 of --

15 A. It's an option that the user has when they're
16 searching for new users. You can give it access to your
17 e-mail account, where it will look at the contact list and
18 try to compare if any of your -- the people listed in your
19 contacts are already GigaTribe users.

20 You will also have the option to send them
21 invites if they're not.

22 Q. Okay. Can you use a GigaTribe account without
23 accepting the certification?

24 A. No.

25 Q. Not at all?

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1 A. Not at this time. If you were able to -- you
2 haven't been able to for several years, I believe, at the
3 very least. When it was first developed that could be
4 possible, but at least for the last several years you have
5 to click on verification.

6 Q. Now, in the terms -- in addition to that, when a
7 person is accepting a person as a contact, you testified
8 earlier that you can actually limit the person's scope of
9 their access to your folders; right?

10 A. Yes.

11 Q. Okay. With regard to this particular case, were you
12 ever requested or asked to look at the activity in this
13 particular case about requests for folders or sharing or
14 anything like that?

15 A. No.

16 MR. SANFT: Your Honor, may I have a moment?

17 THE COURT: Yes.

18 MR. SANFT: Thank you, Your Honor. I have no
19 further questions.

20 THE COURT: Okay. I have just two questions.

21 The first one is whether or not the GigaTribe
22 program itself is password protected on the computer.

23 So if I download GigaTribe, it's on my computer,
24 but I've shared my computer with other people, can they
25 automatically go into my GigaTribe account, or is there a

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1 way to password protect it?

2 THE WITNESS: Well, it would depend. The
3 account is password protected. When you create a screen
4 name and you create your password, you do have to do that.
5 But it can also store your password.

6 So if another user chooses to use your computer
7 if the password is stored, then the program could run.

8 THE COURT: All right. And then as to the
9 chatting, it seems very clumsy that if I send you a request
10 and I have to wait for you to eventually get on your
11 computer to send me a consent and then you have to wait for
12 me to actually be on the computer to receive your consent,
13 to look at your files, then I look at maybe five files, I
14 only like number four, I tell you to have more like number
15 four, I have to wait for you to actually be -- so is there
16 a notification feature so that the users know that someone
17 has sent them an invitation or a chat, or do you actually
18 have to be checking it constantly to keep a communication
19 going?

20 THE WITNESS: You have to check the computer.
21 GigaTribe is -- even on the law enforcement side, it
22 requires the person to be actively engaging in order to be
23 productive with it.

24 Normally most of the chats that we are involved
25 in are back and forth. You might have the initial one

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1 where you send an invite, you might mention something,
2 maybe you can send a password to your shared folder. But
3 typically if you are going to be back and forth, most of
4 the time it's realtime, but you can send messages and wait
5 until they get answered.

6 THE COURT: Okay. Thank you.

7 MS. ROOHANI: Just a few questions, Your Honor.

8 THE COURT: Of course. Go ahead.

9 REDIRECT EXAMINATION

10 BY MS. ROOHANI:

11 Q. Sergeant Carry, Mr. Sanft asked you about remote
12 access to GigaTribe. Do you remember that?

13 A. I'm sorry. He asked about what?

14 Q. About remote access to GigaTribe on the web
15 platform?

16 A. You can remote access, yes.

17 Q. Okay. If a person remote access GigaTribe, say from
18 Europe, would they still have to download the file onto
19 their computer to be able to view it?

20 A. Yes.

21 Q. So there's no web-based cloud platform for GigaTribe
22 for a person to be able to view the files that they have,
23 say, on their home computer on the cloud?

24 A. No. The -- the web access of GigaTribe isn't cloud
25 based in the traditional sense of, like, when we were

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1 discussing Dropbox and Dropbox has their servers.

2 GigaTribe, they're not maintaining the files.

3 If I was an ultimate user and I wanted to access
4 my files via the web, my computer with GigaTribe would
5 actually have to be running.

6 But then through my phone or through any other
7 web-capable device I could log in to it to access files.
8 But it still has to be running at one place.

9 Q. And to see the file -- say, for example, my home
10 computer is what has my GigaTribe running and I'm
11 travelling, and I want to view also sub-similar files, I
12 would have to then pull -- redownload those files onto my
13 local device that I'm travelling with to be able to view
14 those files --

15 A. Yes.

16 Q. -- is that correct? Okay.

17 Mr. Sanft asked you about what shows up when
18 people are downloading. Do you remember those questions?

19 A. Yes.

20 Q. Okay. If a person signs -- if the person who is
21 hosting the file or sharing the file signs off in the
22 middle of a download, what happens to the person who is
23 downloading the file?

24 A. Your download's interrupted. It would stop because
25 it does require the other computer to still be on.

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1 We'll see that in our investigations repeatedly
2 where law enforcement, for example, we have nothing to
3 offer, we're not going to share child pornography. We
4 often share what appear to be fake files for GigaTribe and
5 most other peer-to-peer law enforcement-wise. It's great
6 because we see the file names. That's what we're looking
7 for, file names. That's what's being shown.

8 But once we start downloading, they will usually
9 ask -- get access to our shared folders, at least what
10 we're portraying to be shared. If you see nothing's there,
11 they often just terminate the download.

12 They might unfriend us, which terminates the
13 download; or they might move folders out or just terminate
14 the connection by shutting down, especially if they think
15 it's law enforcement. We've had that happen many times.

16 Q. So to get a complete download, the person would have
17 to remain friends the entire time during the download, the
18 password would have to not change the folder, and then the
19 person offering the file has to not terminate the
20 connection?

21 A. Correct.

22 Q. Okay. On the chat function is there -- on other
23 chat programs that I'm aware of, there's -- I'm here, I'm
24 away, I'm offline. Is there an away function on GigaTribe?

25 A. There is. You can -- you can set your status, and

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1 you can tell people that you're not there, but the
2 computer's still online.

3 Q. Okay. And if the person is on away status, can
4 downloads occur?

5 A. They can. Because their computer's up and running.
6 It's just it's more of the social networking side of
7 saying, "Hey, I'll be right back, I stepped away," but the
8 computer's up and running. You haven't terminated any kind
9 of connections or anything.

10 Q. And would the chats come through if the person was
11 on away status?

12 A. They would certainly go to them. But if they're not
13 there to view them, they wouldn't be there. But I can have
14 my status set as away, and I'm still there at the computer
15 typing and doing anything I want.

16 Q. Okay. I want to talk about -- when was GigaTribe
17 developed?

18 A. I'm sorry? What?

19 Q. When was GigaTribe originally developed?

20 A. I don't remember the original date. For some reason
21 I keep thinking sometime around 2006, 2007, but I don't
22 remember the actual date. It had been around for quite a
23 while and more popular in other countries before it
24 became -- before we saw it so much in the United States.

25 Q. Okay. And Mr. Sanft asked you some questions about

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1 the e-mail confirmation. So I just want to follow up on
2 that.

3 In March 2015 to January of 2016, does the
4 person have to approve that confirmation and click that
5 validation link in the confirmation e-mail to be able to
6 use GigaTribe?

7 A. You would have to at that time.

8 Q. Okay.

9 A. But you wouldn't know -- the issue with GigaTribe
10 and your profile is you can change your e-mail address at
11 any time. Whether that's the original e-mail address or
12 not, we would have no way to know forensically or law
13 enforcement what the original one is, only what it is
14 today.

15 Q. Okay.

16 A. Based on their profile.

17 Q. Okay. And let's assume that somebody continues to
18 get e-mails from GigaTribe, say about whether a paid
19 subscription is not going to be continued for nonpayment.
20 Would that ever go to an account that hadn't been
21 validated?

22 A. No, it would have been whatever the user set up in
23 GigaTribe. I -- let me clarify -- to clarify that, if you
24 have an e-mail today that you validate your account, if you
25 go into GigaTribe and change your e-mail address and all

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1 the future e-mails would go to that, that user e-mail
2 address, but in order for you to have a paid subscription
3 you'd have to do some sort of online billing, which will
4 send receipts and verifications and notifications about
5 your account status because it's not indefinite, it does
6 expire.

7 Q. So even if the validation e-mails say somebody
8 deleted it from their e-mail, the continued e-mail from
9 GigaTribe would go to the e-mail address on file for the
10 account?

11 A. Yes.

12 Q. Okay. I'll talk a little bit about the chat.

13 Do you know, based on your training and
14 experience, what the word pedo, p-e-d-o, stands for in
15 child exploitation terms?

16 A. Yes.

17 Q. What does it stand for?

18 A. It stands for pedophile.

19 Q. And is that a commonly-known term in child
20 exploitation circles?

21 A. It's probably one of the two most common terms we
22 ever come across.

23 Q. What is the second most common?

24 A. PTHC.

25 Q. Which stands for?

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1 A. Preteen hard core.

2 Q. Okay. And I want you to take a look at Government's
3 Exhibit 21B, only for identification purposes.

4 Specifically page -- at the bottom right it says
5 21B-008 to 012.

6 A. I'm sorry. What were the numbers?

7 Q. 018 to 012. On 21B. Do you recognize those pages?

8 A. I do.

9 Q. Okay. So when Mr. Sanft was asking you if you had
10 reviewed any chats in this case, is that the chat that you
11 were referring to?

12 A. That is correct, this is the same chat.

13 Q. Okay. And based upon your training and experience,
14 does this look like it came from GigaTribe?

15 A. Yes, it does.

16 Q. Does it look like it could also come from a
17 different platform?

18 A. There are other platforms that are similar as far as
19 they use profile IDs also.

20 Q. Okay.

21 A. But this is -- this is in the GigaTribe format.

22 Q. And but based upon the numbers, you wouldn't be able
23 to tell whether this is GigaTribe or some other platform;
24 right? That would have to come from some other evidence?

25 A. Correct. These numbers refer to the user profile,

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1 whether it's a source profile ID and the target profile ID.

2 Q. And did me or anybody from my office ever tell you
3 where these chats did come from?

4 A. I do know that they were -- that chats were
5 recovered from one of the evidence artifacts. But I never
6 reviewed all the artifacts.

7 Q. Okay. All right.

8 MS. ROOHANI: A moment's indulgence, Your Honor.

9 We don't have any more questions, Your Honor.

10 THE COURT: All right.

11 Any more cross, Mr. Sanft?

12 MR. SANFT: Yes, Your Honor.

13 THE COURT: Go ahead.

14 RECROSS-EXAMINATION

15 BY MR. SANFT:

16 Q. Sergeant Carry, when the government asked you
17 specifically about the remote access feature, you testified
18 that you can access GigaTribe on your phone, for instance.
19 Would that be one way to access -- exercise or access
20 GigaTribe, is by phone?

21 A. Yes, you could. I'm sorry.

22 Q. Did you want to finish review? I don't want to
23 interrupt what you're doing.

24 A. I'm sorry. Go ahead.

25 Q. How about iPads? Can you use -- or tablets? Can

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1 you use GigaTribe on that kind of feature as well?

2 A. You can access the web portal, yes. You can't
3 download the program. You can access the web portal.

4 Q. Okay. For instance, on your iPhone and your iPad,
5 there's not an app for that, for GigaTribe?

6 A. Correct.

7 Q. And so if you were to be accessing it from your PC
8 or your Macintosh computer, you would actually download
9 software on to your computer that's stored locally on your
10 computer as an application?

11 A. The GigaTribe platform itself, yes, has to be -- you
12 could use it on a Mac, on a Windows computer.

13 Q. Okay. Now, you've talked a little bit about the web
14 access. Is it one of those things where I get on GigaTribe
15 through my phone, for instance, type in my user name and
16 password, and then are able to access my folder from inside
17 GigaTribe?

18 A. If the -- if your computer is running. If your
19 GigaTribe computer or a computer running GigaTribe is
20 running somewhere.

21 Q. Okay. Now, in addition to that, your testimony was
22 is that the payment issue of the pro version -- and you
23 said you're familiar with this account for years; right?

24 A. I'm sorry. What?

25 Q. You've been familiar with GigaTribe for years?

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1 A. Yes.

2 Q. With the pro version it's the payment of a credit
3 card, and it enabled you, as you testified earlier, to a
4 vast amount of access to files and so forth and friends and
5 that kind of thing?

6 A. Yes.

7 Q. With regards to the payment issue, would it be fair
8 to say that in the GigaTribe program itself, it will notify
9 you if you're coming up to a due date with regards to your
10 annual payment, for instance, of the pro version of
11 GigaTribe?

12 A. You should be notified that your account is -- your
13 ultimate subscription is expiring.

14 Q. Right.

15 A. That you would be referred back to a basic or a
16 nonultimate if you don't pay.

17 Q. So it's not only just an e-mail version that's sent
18 out to your e-mail box but, in addition to that, on the
19 actual GigaTribe interface there would be notification that
20 you're coming up to your year?

21 A. Yes.

22 Q. Okay. And I just -- just as a matter of
23 clarification. It's my last question.

24 You had testified, when the government had asked
25 you specifically about my example of being in Europe and

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1 accessing GigaTribe -- if I were to get on my phone and
2 access GigaTribe through my phone, could I initiate a
3 download from my phone to my computer back home if it was
4 on?

5 A. Can you place files on your computer?

6 Q. Or just initiate say, for instance, a download? If
7 I went back to the Europe example, if I was in Europe and
8 I'm looking through my GigaTribe through the web portal and
9 I see a file I want to download, I'm talking with a friend
10 of mine and I want to download that file, because I'm on my
11 phone, I'm assuming I can't do it there. But can I
12 download directly to my computer back home if it's on?

13 A. The web portal access allows you to access your
14 files. You wouldn't have the chat functions and all that
15 with the GigaTribe user on your phone. You would have to
16 use another means.

17 But it allows you essentially remote access into
18 your folders -- into your files, and you would be able to
19 download something to your phone. On your phone it would
20 be cached or stored completely different than on a normal
21 computer hard drive. But it just allows you to access it.

22 Q. Were you ever asked in this case to look through any
23 type of cache or any type of record indicating that a phone
24 that was possessed by my client, Jan, or an iPad possessed
25 by him was used to access the GigaTribe account --

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1 A. No --

2 Q. -- remotely?

3 A. -- I haven't been asked to look at that.

4 Q. Okay. But that would be information that would be
5 stored, more than likely, either locally in your web cache
6 of your browser, your Internet browser, on either the iPad
7 or the iPhone, that would allow you that type of
8 information. Would that be fair to say?

9 A. It would depend on the device, and it would depend
10 on the browser itself. A mobile device is far better at
11 not having Internet history and Internet caches if you
12 delete it. So it would depend.

13 MR. SANFT: No further questions, Your Honor.

14 THE COURT: I don't -- I have a question.
15 Because I think I missed the answer here.

16 So the web portal that you can access with your
17 mobile device would permit you to have access to your own
18 files that you already have on your GigaTribe program on
19 your computer?

20 THE WITNESS: Yes.

21 THE COURT: But could you access someone else?
22 For example, I sent you a friend request, but now I have to
23 go to Europe. I check to see if you've accepted me as a
24 friend yet, and you've said yes. Can I now begin the
25 download? Or do I have to go back to my computer before I

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1 could do that?

2 THE WITNESS: You would have to use your
3 computer.

4 THE COURT: So I couldn't use my iPhone or any
5 other mobile device?

6 THE WITNESS: No. The purpose of the web-based
7 capability of GigaTribe is to access your own files and
8 folders.

9 THE COURT: Okay. Thank you.

10 THE WITNESS: And I'm sorry, Judge. I -- can I
11 clarify something?

12 THE COURT: Yes.

13 THE WITNESS: I'm sorry. I was asked to look at
14 the chats here. And when it comes to the format, forensic
15 programs often export things very similar. These are the
16 Grindr chats that -- I think I had stated these are
17 GigaTribe chats, but these are the Grindr chats. But the
18 format is very similar as far as a profile ID and
19 everything. But these are Grindr.

20 THE COURT: So that's Exhibit 21B?

21 MS. ROOHANI: Yes.

22 MS. CARTIER-GIROUX: Yes, Your Honor.

23 THE COURT: And how do you know that they're
24 Grindr chats and not GigaTribe? What's the difference?
25 What is the distinction that comes to your mind?

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1 THE WITNESS: Reading through the chats to tell
2 if there's actually -- they're links that involved Grindr
3 itself in application for mobile platforms.

4 Where I -- I think I stated when a forensic
5 person exports them they -- you could export them very
6 similarly as far as profile IDs, dates, and then the
7 content.

8 So once I looked at it, I could see that that's
9 the Grindr chat.

10 THE COURT: Okay. Thank you.

11 Redirect, Ms. Roohani?

12 MS. ROOHANI: I just have one question.

13 FURTHER REDIRECT EXAMINATION

14 BY MS. ROOHANI:

15 Q. I want to be absolutely clear. The web access for
16 GigaTribe, if you web -- access is different than being
17 able to watch a video that is on your home folders; is that
18 correct?

19 A. The web access lets you access anything on your home
20 folder, as long as your home folder is on -- or I should
21 say your computer is on and the GigaTribe program is
22 actively running, then you could access and watch it. But
23 it doesn't have the same functions as far as chat or any of
24 those other features.

25 It's purely a file access capability.

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1 Q. And to -- I guess maybe I'm trying to understand the
2 distinction between accessing a file -- I can access the
3 file and see that it exists, right, and then I can -- if I
4 want to view the file on my phone, what do I have to do?

5 A. You would just click on the file to -- the file to
6 download. And it would open up, download to your phone.

7 Just on -- on -- for example, an iPhone, an
8 iPhone doesn't typically have, like, a folder where it
9 stores stuff. An Android-type device typically does have a
10 download folder where it would store -- store items, maybe
11 on the external memory card or another place on the phone.
12 So it's device specific.

13 But, yes, you can absolutely click on -- you can
14 access your web portal, you can click on a movie or an
15 image, for example. It will download to your phone, and
16 you can view it on that device.

17 Q. But if it doesn't download to your phone, you cannot
18 watch it on your phone; is that correct?

19 A. Correct. It's -- I guess it's a technical aspect.
20 If you're viewing it on your phone, it's downloading to
21 your phone in realtime, but it has to get there first. It
22 doesn't do some sort of remote viewing where it never came
23 to you, it has to download to the device to read it.

24 Q. Okay.

25 A. To be able to see it. It might -- it doesn't even

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1 stream like the typical news. But even when that happens,
2 it's a download to your device.

3 Q. Okay.

4 A. But it may not be recoverable.

5 MS. ROOHANI: Okay. That's it, Your Honor.

6 THE COURT: All right. What about if you have
7 something like Jump Start or some of the other programs
8 that provide remote access to your computer, then you could
9 view it? But, like you're saying, it wouldn't be
10 downloaded on your device, it would still be on your
11 computer, but you could still see it realtime?

12 THE WITNESS: Correct. If you used mobile
13 devices with applications, you certainly could have a
14 remote desktop app, a VNC client, or something like that.
15 In that aspect you are remoting into the device usually in
16 a full-function mode where you are still using the device
17 on the other end, not just the folder on it.

18 So if that was the case, if you had remote
19 desktop on your app, then you can remote in and use your
20 computer on the other side.

21 THE COURT: Then would there be any forensic
22 fingerprint of that? On the phone or on the --

23 THE WITNESS: No.

24 THE COURT: Okay.

25 THE WITNESS: No, there wouldn't be.

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1 THE COURT: All right. I've lost track of where
2 we were. I think recross.

3 Mr. Sanft, any other questions?

4 MR. SANFT: Well, Your Honor, just based upon
5 your questions as well as the government's.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. SANFT:

8 Q. Your testimony on the access portion of this, you
9 said that in order for you to view something -- so, for
10 instance, if you and I are -- I just want to make sure
11 because I'm a little bit confused too.

12 If I download something from your -- from your
13 client or -- not from your client, but from you to my
14 account, and then I leave and I go somewhere and I want to
15 access what I just downloaded from you, I could do that?
16 Is that what we're talking about?

17 A. Well, if you -- if we -- if you had ultimate
18 subscription, you could access it through the web portal,
19 but it requires an ultimate subscription. Like law
20 enforcement, for example, we don't -- when we're conducting
21 these investigations, we don't have an ultimate
22 subscription. We would have no way of logging in through
23 the web portal to see what we've -- what we've downloaded.

24 Some users have ultimate, some users don't. For
25 you to have that functionality of being able to access your

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1 files from anywhere, you have to have a paid subscription.

2 And once you have that paid subscription, you
3 can access your own files from anywhere, as long as it's
4 something that you've already downloaded, GigaTribe is
5 running, and it's in that folder.

6 Q. Okay. And you had -- the government had -- or
7 actually I think the Court had asked you specifically about
8 the forensic fingerprints, or something along those lines.

9 You've been able to determine whether or not
10 someone's actually downloaded something off of the web
11 portal.

12 Would it be fair to say, of course, is that your
13 Internet cache would be one way of determining whether or
14 not you've accessed that Internet portal?

15 A. Forensically? Your Internet activity should be
16 fairly consistent regardless what you access. But it all
17 depends on what browser you're using, what your browser
18 settings are, like in private browsing, or something
19 similar to that, and also the device.

20 Again, a mobile device is less likely to keep
21 data when it comes to Internet history than a computer with
22 a traditional hard drive because of the way the hard drives
23 work.

24 But it would all depend.

25 So if you're asking would you absolutely find

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1 that in your Internet cache, Internet history, there's no
2 way to determine that. It depends on the user's use of
3 cleaning programs, how much they're on the Internet, and
4 things like that.

5 But if I was a forensic examiner, I would
6 certainly look for that in one aspect relatively quickly.
7 You might find that it's not even there, not even worth
8 further investigation.

9 Most of the time GigaTribe, in our
10 investigations, have to do with the actual use of the
11 program, other than just a person accessing their own files
12 from time to time.

13 Q. Well, let me ask you this final question.

14 Going back to the idea of remote access. If I
15 am accessing my GigaTribe account, can someone at the same
16 time access my GigaTribe account while I'm currently using
17 the account?

18 A. If -- you mean, if you have GigaTribe on multiple
19 computers?

20 Q. Sure. Yeah. We have it on multiple computers. I
21 get online. I'm on the GigaTribe account. I'm chatting
22 with someone. Can someone else get on that same account at
23 the exact same time as me?

24 A. It would bump you off. It would bump you off. You
25 only -- only one user can have -- can be logged into the

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1 program at one time.

2 It is possibly logged into a web portal, but the
3 actual program itself that includes the chat and all that
4 other activity, only one user at a time. If you log in
5 from a different device, it will bump the other one off.

6 MR. SANFT: Thank you.

7 No further questions.

8 THE COURT: Thank you.

9 Anything else, Ms. Roohani?

10 MS. ROOHANI: No. No, Your Honor.

11 And we would ask that -- if there are no further
12 questions, that Sergeant Carry be excused.

13 THE COURT: All right.

14 Does the defense need to have Sergeant Carry on
15 stand-by for any potential recall, or can we go ahead and
16 allow him to be excused?

17 MR. SANFT: We don't anticipate recalling him,
18 Your Honor.

19 THE COURT: All right. Thank you very much,
20 Sergeant Carry. You're all done. Please be careful on the
21 way down with the steps. And I don't think any wires were
22 moved, but just in case, please be careful with your step
23 there.

24 (The witness was excused.)

25 THE COURT: Ms. Roohani, would you like a

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1 bathroom break, or do you want to call your next witness?

2 MS. ROOHANI: I would love a bathroom, Your
3 Honor.

4 THE COURT: Okay. Let's take a 10-minute
5 bathroom break. It's 10:10. Let's plan to be back here at
6 10:20 as much as you can. The bathrooms are the furthest
7 they could possibly be, so I understand. Don't rush. If
8 we start a little bit late, that's okay. But try to be
9 back here in about 10.

10 COURTROOM ADMINISTRATOR: All rise.

11 (Recess from 10:10 a.m. until 10:25 a.m.)

12 COURTROOM ADMINISTRATOR: All rise.

13 THE COURT: Thank you. You may be seated.

14 (Pause in the proceedings.)

15 THE COURT: I think we're all back from the
16 bathroom break. Is that right?

17 All right. So before we go forward, I was told
18 by my courtroom deputy that we might have to change up the
19 timeline today a little bit. So it looks like we have an
20 attorney who needs to leave a little bit before lunch, is
21 that right, and won't be back until a little bit after
22 lunch? So we need to take an extended lunch.

23 What time do you propose?

24 MR. DURHAM: Your Honor, I have a meeting with
25 the US Attorney on a separate case at 12:00. And then I

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1 have an appearance in front of Judge Hoffman at 1:30, but I
2 don't anticipate it will take longer than a half hour. So
3 until 2:00.

4 THE COURT: All right. So is it the US
5 Attorney's Office just right next door?

6 MR. DURHAM: Yes.

7 THE COURT: Okay. And that's at 12:00 noon?

8 MR. DURHAM: Correct.

9 THE COURT: Okay. So we can break at 11:50?

10 MR. DURHAM: Yes. Or even noon. I mean, I
11 can --

12 THE COURT: All right. And then you believe
13 you'll be back from Judge Hoffman's by 2:00?

14 MR. DURHAM: 2:00.

15 THE COURT: Okay.

16 MR. DURHAM: And depending on what witness the
17 government plans on calling, if I'm late, obviously
18 Mr. Marchese or Mr. Sanft can start without me.

19 THE COURT: Oh, so you do want us to start
20 without you? We were planning to start at 1:00, but if
21 you're not going to be here, is that a problem? Or does it
22 depend on who they're going to call?

23 MR. DURHAM: Correct, yeah. It will depend on
24 who they're going call. So I guess 2:00, just to be safe,
25 if the government's okay with that and the Court's okay

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1 with that.

2 THE COURT: Okay. So we'll break at 11:50.

3 When we break, we'll ask the government to let us know who
4 you plan to call in the afternoon so we know whether or not
5 Mr. Durham needs to be -- if we need to wait for Mr. Durham
6 to be back at 2:00 or if we can go forward with a different
7 witness that's not his witness.

8 MS. ROOHANI: Your Honor, we -- we do have one
9 witness that we can call out of order, which is Albert
10 Giangregorio. But it depends on where we are -- I mean, if
11 you don't mind us taking somebody out of order. But I
12 don't know if --

13 THE COURT: Well, let's wait and see at 11:50
14 where we are.

15 MS. ROOHANI: Certainly.

16 THE COURT: And then we can find out when he
17 needs to be back.

18 All right. So, Aaron, do we need to bring down
19 the screen?

20 MS. ROOHANI: That would be great.

21 THE COURT: All right. The United States may
22 call its next witness.

23 MS. CARTIER-GIROUX: The United States calls
24 Joseph Ahmed.

25 COURTROOM ADMINISTRATOR: Please remain standing

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1 and raise your right hand.

2 You do solemnly swear that the testimony you
3 shall give in the cause now before the Court shall be the
4 truth, the whole truth, and nothing but the truth, so help
5 you God?

6 THE WITNESS: I do.

7 COURTROOM ADMINISTRATOR: Thank you. You may be
8 seated.

9 Please state and spell your name for the record.

10 THE WITNESS: Joseph Ahmed. First name
11 J-o-s-e-p-h, last name A-h-m-e-d.

12 MS. CARTIER-GIROUX: May I inquire?

13 THE COURT: Yes, go ahead.

14 JOSEPH AHMED

15 called as a witness on behalf of the
16 Government, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CARTIER-GIROUX:

19 Q. Good morning, Detective Ahmed.

20 Where do you work?

21 A. I am detective for the City of Buffalo, New York
22 Police Department.

23 Q. And how long have you been a detective with the
24 Buffalo Police Department?

25 A. Approximately 11 years.

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1 Q. And what did you do before that?

2 A. I was in patrol in Buffalo PD.

3 Q. And how long were you a patrol officer?

4 A. Approximately eight years.

5 Q. Okay. Were you ever a member of the Child
6 Exploitation Task Force?

7 A. Yes. I still am affiliated with it.

8 Q. Okay. And in what capacity?

9 A. Task Force Officer for FBI Buffalo. So Deputy US
10 Marshal since August or September of 2006 to current.

11 Q. Have you ever acted in an undercover capacity as a
12 member of the Child Exploitation Task Force?

13 A. Yes.

14 Q. And what does a -- when you're acting in undercover
15 capacity, what does that mean? Like, what do you do for
16 the child exploitation --

17 A. Well, in child exploitation cases, it can range from
18 monitoring file sharing networks to having an online
19 persona, in which you engage potential offenders, using an
20 alias.

21 It can also involve Craigslist or other, you
22 know, similar back-page-type investigation. So it ranges.

23 Q. I'm going to bring you to specifically September --
24 or actually August of 2015 and then, thereafter, September
25 of 2015.

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1 Were you involved as an undercover for the Child
2 Exploitation Task Force working on the GigaTribe file
3 sharing program network?

4 A. Yes.

5 Q. And did you have an undercover user name?

6 A. I did.

7 Q. What was that user name?

8 A. Pedotraderjoe.

9 Q. Did you pick that user name?

10 A. I did.

11 Q. Why did you pick that user name?

12 A. Because the user name is indicative of the type of
13 files that I was, you know, purporting to share.

14 Q. And what type of files were you purporting to share?

15 A. Those depicting child pornography.

16 Q. Were you involved in any tribes when you were acting
17 as pedotraderjoe?

18 A. In terms of tribes, I'm not sure what you mean. I'm
19 sorry.

20 Q. Okay. Were you members of any groups on GigaTribe?

21 A. Yeah. I'm sure that I was accepted into various
22 friend groups. Users accept you into their friend groups
23 or you accept them into your friend groups. So, yes, I
24 was.

25 Q. When you were online using GigaTribe, are you using

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1 the GigaTribe program that is currently available to
2 subscribers or that was available to subscribers in 2015,
3 or are you using an older version?

4 A. An older version.

5 Q. Okay. And does GigaTribe allow the FBI to use this
6 older version of GigaTribe?

7 A. Yes.

8 Q. And we heard testimony previously that the new
9 version of GigaTribe, if you are not an ultimate
10 subscriber, doesn't allow you to password protect your
11 folders.

12 Does the version that you were using, this older
13 version, which was permitted law enforcement to be used,
14 did they -- did that version allow you to password protect
15 your folders?

16 A. It did.

17 Q. And did you have an ultimate subscription?

18 A. No, I did not.

19 Q. When you were on the GigaTribe platform, were you
20 also running a law enforcement program at the same time?

21 A. Yes.

22 Q. Were you able to screen capture your interactions?

23 A. Yes.

24 Q. Did the law enforcement program that you used also
25 have a capacity of something called Comcast?

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1 A. CommView.

2 Q. CommView. I'm sorry.

3 A. Yes.

4 Q. And what would CommView allow you to do?

5 A. CommView manages packet transfer. So if you think
6 of a file that you download from another user, like a
7 picture, and imagine that that picture is made up of a
8 thousand packets, so individual pieces of the picture,
9 CommView tells you where those packets came from.

10 And you don't actually have a full file until
11 your machine captures all those packets and reassembles
12 them into the picture that you see.

13 Q. So what does CommView give you in order to tell you
14 where your packets are coming from?

15 A. CommView provides you the IP address of origin, the
16 locality that that IP address is originating from, at least
17 the country, sometimes the state, if it's available, among
18 other things, and it will show you an approximate number of
19 packets -- not packets, check that data, you know, in
20 bytes, kilobytes, what have you, megabytes that has been
21 transferred between your IP address and that IP address.

22 Q. So is it fair to say that CommView allows you to get
23 the IP address from the computer, where the computer is,
24 that you're being allowed to download from?

25 A. That is correct. It's the IP address of origin,

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1 correct.

2 Q. Okay. In August -- at the end of August and
3 September of 2015, were you friends on GigaTribe with a
4 user name lars45?

5 A. Yes.

6 Q. How did you become friends with lars45?

7 A. Well, I accepted lars45 into my friend network, I
8 believe it was August 3rd of 2015; and in that case, since
9 I accepted that user into pedotraderjoe's friend network, I
10 believe that I would have been in possession of or had an
11 invite from him.

12 So you receive invitations, and you, as a
13 GigaTribe user, have to actively decide, yes, I would like
14 to be friends with this person or trade with this person or
15 no.

16 And I would have said at that point, okay, I'll
17 accept the invitation.

18 Q. Okay.

19 A. But it may have come with the group of invitations
20 all at the same time. So I'm not positive, you know,
21 exactly, you know, if I looked at that specifically. But I
22 would accept groups at a time all the time.

23 Q. But there came a point in time where you became
24 friends with this lars45?

25 A. Yes, I believe it was August 3rd.

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1 Q. Okay. Of what year?

2 A. 2015.

3 Q. All right. And when you're friends with someone on
4 GigaTribe, and specifically when you were friends with
5 lars45, were you able to see file folders that lars45 had?

6 A. Yes.

7 Q. And do you recall how many he had that you were able
8 to see?

9 A. I recall that there was three folders containing
10 various files in each.

11 Q. Okay. Now, this lars45 individual, do you recall
12 whether or not he had a regular subscription or an ultimate
13 subscription?

14 A. Ultimate.

15 Q. Okay. So would it be fair to say that with his --
16 with his -- were his folders password protected?

17 A. Yes, they were.

18 Q. Okay. And did there come a point in time where he
19 gave you access to his folders?

20 A. Beginning on August 4th. And I did not -- for
21 whatever reason, I did not monitor the software on August
22 4th. I may not have been at work, it may have been the
23 wrong time of day, et cetera.

24 On August 4th I received a message from user
25 lars45 asking for the password to the files that I was

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1 sharing. And then a few messages later lars45 provided the
2 password for his files.

3 Q. Now, you just testified that you received a message
4 from lars45 with the password to the files. Was that
5 through the chat function on GigaTribe?

6 A. Yes.

7 Q. Before you came in here to testify, did you review
8 some of the United States exhibits, specifically -- and it
9 would be in the book in front of you -- Exhibit 1 for
10 identification, Exhibit 2A for identification, Exhibit 2B
11 for identification, and Exhibit 2C for identification; 2C
12 having numerous pages to it, I believe 50 or 60 pages to
13 it?

14 A. Yes.

15 Q. Okay. Starting with number -- let's start with 2A.
16 2A. What was, if -- if you could recognize 2A, what is 2A?

17 A. 2A is a disk containing the undercover session with
18 lars45 from my undercover user name.

19 Q. Okay. And did you view that disk?

20 A. Yes.

21 Q. You viewed the contents?

22 A. I did.

23 Q. And is that -- is what's contained on 2A the
24 recording that you just testified with regard to your
25 interaction with lars45 on September 14th of 2015?

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1 A. Yes.

2 MS. CARTIER-GIROUX: At this time I'd move to
3 admit 2A.

4 THE COURT: Any objection?

5 MR. DURHAM: No objection, Your Honor.

6 THE COURT: All right. Exhibit 2A will be
7 admitted.

8 (Government's Exhibit 2A received.)

9 BY MS. CARTIER-GIROUX:

10 Q. 2B. Take a look at 2B. Do you recognize what is
11 Government's 2B for identification?

12 A. Yes.

13 Q. What do you recognize 2B to be?

14 A. These are -- or this is a screen capture of my view
15 of the GigaTribe software, and I captured this using
16 Camtasia, using a video capture.

17 Q. Okay. So is it fair to say what's in 2B for
18 identification is a screenshot of what is contained in the
19 video 2A, it's one screenshot of it?

20 A. Yes.

21 MS. CARTIER-GIROUX: At this time we would move
22 for 2B to be admitted.

23 MR. DURHAM: No objection.

24 THE COURT: All right. So 2B will be admitted.

25 (Government's Exhibit 2B received.)

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1 BY MS. CARTIER-GIROUX:

2 Q. What about 2C?

3 A. That is another screenshot from that same video.

4 Q. Now, 2C, is it not a series of screenshots that goes
5 1 through -- could you tell me --

6 A. Yes.

7 Q. -- what number it is? Is it 60 --

8 A. Yes.

9 Q. -- 1 through 57?

10 A. Yes.

11 Q. Okay. And do those screenshots fairly and
12 accurately reflect instances in the video from 2A?

13 A. Yes.

14 MS. CARTIER-GIROUX: At this time we'd move to
15 admit 2C.

16 THE COURT: Any objection to 2C?

17 MR. DURHAM: No.

18 THE COURT: All right. 2C will be admitted.

19 (Government's Exhibit 2C received.)

20 BY MS. CARTIER-GIROUX:

21 Q. I'm going to have you take a look at 2B. If we
22 could put that up on the monitor, please.

23 Just so you know, sir, these are actually --
24 it's like ESPN, you can touch the screen, and it will make,
25 like, a circle.

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1 A. Okay.

2 COURTROOM ADMINISTRATOR: Marissa, try pulling
3 the VGA out. Because it looks like they didn't give us two
4 buttons for that table. So it looks like the VGA should
5 take over when you pull the VGA.

6 (Discussion held off the record.)

7 MS. CARTIER-GIROUX: Your Honor, I just gave it
8 to him in a different format.

9 THE COURT: Okay.

10 MS. CARTIER-GIROUX: It might be easier just to
11 run it off that. Thank you.

12 (Discussion held off the record.)

13 BY MS. CARTIER-GIROUX:

14 Q. So we're looking right now at Government's 2B1.
15 What do we see happening in 2B1? What is this a picture
16 of?

17 A. That is a screen capture from the Camtasia video
18 that I started and use any time that I'm doing a UC
19 session --

20 Q. Okay.

21 A. -- on GigaTribe.

22 Q. And it looks like the tab that's visible is which
23 tab?

24 A. The profile tab.

25 Q. Of which user?

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1 A. Lars45.

2 Q. Okay. And under the word lars45 at the top, yeah,
3 there -- do you see where the pointer is?

4 A. Yeah.

5 Q. The lars45 at the top, underneath it, do you see any
6 words written?

7 A. It says "connected," and then "(away)."

8 Q. And what does that mean to you?

9 A. That means that that user's computer is currently
10 connected to the GigaTribe file sharing software and that
11 the user is most likely not there at that moment.

12 Q. Okay. When you say "most likely," is it because the
13 user can set that to whatever -- even if they're sitting
14 there, can set it to away?

15 A. Right. Yeah.

16 Q. Okay. But the connected -- what does that tell you
17 when it says "connected"?

18 A. Connected means that they are online at that moment.

19 Q. What does that mean you can do, if you're able to
20 access their folders?

21 A. You can share files with them at that moment.

22 Q. And can you download from them as well?

23 A. Yes.

24 Q. Okay. There is something called status, do you see,
25 under loading information?

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1 A. Yes.

2 Q. What does that say there?

3 A. That says "Accepted in my network August 3rd, 2015."

4 Q. And what does that mean?

5 A. That is the first time that I accepted lars45 into
6 the friend group or user group of pedotraderjoe.

7 Q. Okay. And let's look at the public information
8 section. What do you see under user name?

9 A. Let me see here. Well, there's lars45. And then
10 the license is ultimate.

11 Q. What does that mean?

12 A. That's the type of license that -- the version of
13 GigaTribe that they're using. Obviously a higher level
14 license allows things like multiple downloads or, as you
15 referred to before, password protected files.

16 Q. So this would be what would be called an ultimate
17 subscription?

18 A. Yes.

19 Q. And underneath there's something called -- what's it
20 say, "user since" --

21 A. That says that lars45 was created March 21, 2015.

22 Q. Okay. And then let's look down further.

23 Now, all the fields aren't filled in except for
24 those fields. The other fields that aren't filled in, are
25 they optional fields?

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1 A. They are. The fields that you see filled in there
2 are default fields that the program populates for you.

3 Q. Okay.

4 A. But if you, for instance, wanted to put something in
5 about your age or your sex or your country, that's up to
6 you --

7 Q. Okay.

8 A. -- the user.

9 Q. Let's look at 2B2. What do we see in 2B2?

10 A. On August 4th, lars45 sends me a message at 1:47,
11 "Hi."

12 Q. Okay. Now, August 4th, I see lars45, it says
13 "0408."

14 A. Correct.

15 Q. How come that's not April 8th?

16 A. Because the software -- and I'm not sure if it's the
17 designers of the software, but they put the -- they use the
18 day first before the month.

19 Q. Like in Europe?

20 A. Yes. Correct. Because that's where the -- this is
21 French. GigaTribe is a French platform. That's who
22 designed it.

23 Q. Okay. So on August 4th, lars45 reached out to you
24 in the chat function of GigaTribe?

25 A. Yes.

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1 Q. And are you friends at this point?

2 A. Yes.

3 Q. Okay. And he says to you, "Hi" --

4 A. He says "Hi," and then about four hours later, five
5 hours later "pass?" So --

6 Q. What does "pass?" mean to you?

7 A. He's inquiring what about the password to the files
8 that I am sharing.

9 Q. Okay. And you already testified that your --
10 because of the version of GigaTribe that you were using,
11 your folders were password protected?

12 A. Yes.

13 Q. Okay. And what's the next thing that lars45 says --
14 lars45 says to you?

15 A. He says, "Mine is 9090."

16 Q. Now, this 9090, what did that turn out to be?

17 A. That turned out to be the password to the three
18 files that he was sharing.

19 Q. Okay. And then next it says "bell received." What
20 is that?

21 A. That is an audible tone that another user will send
22 to you to kind of alert you to the fact, hey, I'm here. So
23 it comes out that -- if you have speakers on your computer,
24 you hear a bell. And that is to get you, the other user,
25 to say, oh, here I am, let me start talking to this person.

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1 Q. In order to, like, ring the bell on your end, do
2 they have to physically do it, like a horn in a car, you
3 have to not --

4 A. Absolutely.

5 Q. Okay.

6 A. Yeah.

7 Q. And what is the next communication that you
8 received, and at what time, from lars45 after he tries to
9 get your attention?

10 A. 7th of August at 8:16, is that 6 or an 8? I'm
11 sorry. 8:16. And it says "Hi."

12 Q. Okay.

13 A. Then that's followed by another bell to get my
14 attention. And then again inquiring what the password to
15 my files would be.

16 Q. Okay. And then what happens next?

17 A. Then there is -- I log on the 17th of August, and I
18 ask are you there? I say, "You there?"

19 Q. Okay.

20 A. He replies -- or, I'm sorry, lars45 replies about
21 five hours later, "Yes." And then "Hi" about almost at the
22 same time.

23 Q. Let's now turn to 2C1. 2C1. Okay.

24 What do we see in 2C1? It looks like the
25 folder's tab is hit. What are we seeing here?

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1 A. Okay. So those are the folders that that profile is
2 currently sharing, or willing to share, and there are three
3 of them. They're labeled "AAA," "BBB," and then the word
4 "Girls."

5 Q. Okay. And, again, this -- these screenshots are
6 coming from what date?

7 A. Those are from the date of the UC section, which if
8 I recall correctly was -- is it September?

9 Q. September 14th?

10 A. September 14th, yeah.

11 Q. Okay. And let's now go to 2C2. And what is 2C2
12 telling us?

13 A. So I attempted to look at folder AAA to see what's
14 contained therein, and then it prompts me with a request
15 for the password for that folder.

16 Q. So is it fair to say that this lars45 user had his
17 passwords password protected? Right?

18 A. His folders were -- yes, they were password
19 protected.

20 Q. So his folders were password protected?

21 A. Yes. Yes, they were.

22 Q. And even though you were friends with him, could you
23 get in those folders without the password?

24 A. No.

25 Q. Okay. Let's go to 2C3.

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1 What do we see in 2C3?

2 A. That is me entering the password 9090.

3 Q. Okay. And then let's go to 2C4. And after entering
4 the password, what did it allow you to do?

5 A. It allows you to see the types of files and the
6 titles of those files contained within the folder AAA.

7 Q. And can you tell from this screenshot how many files
8 are in AAA?

9 A. At the moment I looked at it?

10 Q. Yes.

11 A. Let's see. 17.

12 Q. Okay. And on the bottom of the screen, you see next
13 to the folder 17 elements. What does that mean?

14 A. That's a reference to how many files are actually in
15 there.

16 Q. Okay. And actually on here, we can actually see --
17 in the lower right-hand corner can we see the time and the
18 date?

19 A. Yes. That's the time on my machine.

20 Q. Okay. Let's go to 2C5.

21 What are we seeing in 2C5?

22 A. That is -- I've highlighted the file titled
23 "Girls" --

24 Q. Okay.

25 A. -- being shared by lars45.

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1 Q. And why don't we go to 2C6.

2 And what are we doing in 2C6?

3 A. It's the prompt asking me for the password to access
4 that file. And I have populated that with the password
5 9090.

6 Q. Okay. Let's go to 2C7.

7 Now, after you entered that password into the
8 Girls folder, what did you -- were you able to get in?

9 A. Yes.

10 Q. Okay. And how many files are in that folder?

11 A. This one says 17.

12 Q. Let's go to 2C8. Oh, I'm sorry. Before -- it's
13 okay. You can stay there.

14 When you were looking at 2C7, and you can check
15 in your book, are they -- do they appear to be images or
16 videos?

17 A. Videos.

18 Q. Okay. Similarly with AAA, when we were looking at
19 it, did they appear to you to be images or videos?

20 A. Videos.

21 Q. All right. And looking at 2C8, what is this screen
22 we have popped up in front of your screen?

23 A. That is CommView, which is the program that we
24 referenced earlier that is running during the entire UC
25 session. And it is normal for me to check the status of

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1 CommView to make sure -- to see which IP address I'm
2 connected with and has the most packet transfers.

3 Q. And how can you tell which IP address you're
4 connected with from CommView?

5 A. At the time, at this one the -- this one's a little
6 harder because initially, if you look at the third and
7 fourth sections that say "in" and "out," that is the data,
8 in and out of the connection from my computer to those
9 various IP addresses.

10 And at that point they're all relatively similar
11 low numbers. But what I look for then is which of those
12 begins to increase dramatically when I start downloading
13 files or they attempt to download from me.

14 So that's kind of me previewing to see, okay,
15 who am I connected with, and now I know, okay, what am I
16 going to look for, when, you know, when I get to that.

17 Q. Okay. Let's go to 2C9.

18 THE COURT: I'm sorry. Can we just back -- so
19 2C8, you still don't know who lars45 is yet on Comcast?

20 THE WITNESS: I do.

21 THE COURT: On CommView?

22 THE WITNESS: And that one I do because if you
23 look, the -- if you see the second from the top, there's a
24 little arrow.

25 THE COURT: Okay. So that's your current

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1 connection?

2 THE WITNESS: Yeah, that's -- I know that's the
3 one I'm looking at because following the IP address it says
4 United States. So --

5 THE COURT: Can you read that number for me?
6 It's just too tiny for me. I know it starts 192.

7 THE WITNESS: I'll do my best. That's the local
8 IP, which is going to be my internal IP, and then what you
9 want is the remote IP because that's the IP of that user.
10 And it looks like 68 --

11 BY MS. CARTIER-GIROUX:

12 Q. It's the one that starts -- 68?

13 A. Yeah; .104.2.249.

14 THE COURT: Okay. So I got 68.104.2.249?

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 MS. CARTIER-GIROUX: Okay. Let's go to the next
18 one, 2C9 -- all right.

19 BY MS. CARTIER-GIROUX:

20 Q. Now, when you take your icon and you -- I'm sorry,
21 when you take your cursor and you hover over the file, the
22 video file, does it show you the name of the file?

23 A. Yeah. Because what you see in the initial
24 screenshot is sometimes only a partial name because the
25 name is too long. So I'll just double check it by doing

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1 that. And that's what I did in that.

2 Q. And can you read what this file name is in this
3 girl's folder that we're hovering over right now?

4 A. I'm going to do my best here.

5 Q. Okay.

6 A. "Kidsbox-ThaiLolita-Lolita collection" -- and I
7 can't really read the next part, but "12 Y girl fucked by
8 14 YO boy" and something with -- I'm sorry.

9 Q. That's okay.

10 A. It's hard to read. And then ".13" something "good
11 mature.AVI." I'm sorry.

12 Q. That's okay.

13 A. It's hard for me.

14 Q. That's okay.

15 Let's go to 2C10. All right.

16 Can you read the file that you're hovering over
17 now, 2C10, which is from the girl's folder?

18 A. Yeah. "!!new 13 YO Lee and 12 YO girl."

19 Q. Now --

20 A. Back and forth, back and forth.

21 Q. Okay. When you're doing that, when you're hovering
22 over and you're seeing what -- the file names, why are you
23 doing that in this section, what are you trying to
24 accomplish by doing that?

25 A. Well, I'm looking for file types that are indicative

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1 of child pornography. And the term YO is reference to
2 years old. So that tells you in the initial title this is
3 purported to depict an 11-year-old -- I'm sorry,
4 13-year-old and a 12-year-old.

5 Q. Okay. Let's look at 2C11.

6 Again, 2C11, can you read the file name of the
7 icon that you're hovering on?

8 A. Yes. "6 years old boy fucking his mom," and then
9 the file extension, I'm not sure what -- I'm sorry.

10 Q. That's okay.

11 A. The file extension is really small.

12 Q. Now, let's go to 2C12.

13 What are we doing in 2C12?

14 A. That is highlighted the folder "BBB."

15 Q. So we've already gone into AAA, we've gone into
16 Girls, and now we're going into BBB?

17 A. Correct.

18 Q. Let's go to 2C13. Okay.

19 In BBB, this is the first screenshot, how
20 many -- does it indicate on 2C13 how many files are
21 contained in BBB?

22 A. At that moment, 838.

23 Q. And let's go to 2C14. Okay.

24 Can you tell what we're doing in 2C14?

25 A. Now, I've highlighted one of the video files.

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1 Q. Uh-huh. And what is that video file name?

2 A. I can't make out the first character. "Dad fucks
3 his son very deep." And it's followed by a number and then
4 the file extension MP4. I can't tell if that's a duration
5 after the number.

6 Q. Okay. Let's go to 2C15.

7 Now, is it fair to say that what you're doing in
8 the video is you're scrolling through all the files
9 contained in BBB?

10 A. Yes.

11 Q. Okay. And what do we see in 2C15?

12 A. 2C15 I've highlighted or I'm about to click on for
13 download possibly that file name, which is a series of
14 numbers.

15 Q. When you look for -- I mean, when you look for the
16 files to download, what are you looking for? Because
17 obviously you're not going to download 838 files.

18 A. Well, what I'm looking for is when we -- when I do
19 an undercover session of this nature, I want to, if I can,
20 I'm looking for someone who is sharing predominantly or a
21 majority of files containing child pornography; i.e., it's
22 not a mistake to have -- it could -- may be a mistake to
23 have one. It's absolutely possible that they could have
24 downloaded from another user.

25 I'm looking for somebody who absolutely has an

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1 abundance of these. So while I'm highlighting these
2 titles, I'm showing myself, hey, I'm not wasting my time
3 here, there's a lot of titles indicative, in my experience,
4 of files containing child pornography.

5 Q. Okay. Let's go to --

6 THE COURT: Why do -- I'm sorry. Just before we
7 move on. Why do some of them have, like, a construction
8 column? Does that mean that it's --

9 THE WITNESS: Okay. So that is --

10 THE COURT: -- corrected or something?

11 THE WITNESS: No. So when you -- when you're --
12 when your computer, or any computer, wants to show you a
13 video, it needs an application to open the video for you.

14 So if it's a Windows machine, like your machines
15 here, it would be Windows Media Player. And there's that
16 little icon -- I don't know if you're familiar with it,
17 with the four colored windows. That icon is for VLC Media
18 Player. It's another application that will open the video.

19 So it's showing you, when you open that video,
20 that VLC Media Player is going to open it. And the pylon
21 is their icon for that media player.

22 THE COURT: And what about the ones that don't
23 have the pylon that are just --

24 THE WITNESS: That is Windows Media Player. And
25 the reason that happens sometimes is if you look at some of

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1 the -- like if you look at the middle of the screen
2 right -- let me see, right here --

3 THE COURT: You can just draw on it.

4 THE WITNESS: I don't know how to draw on it.

5 MS. CARTIER-GIROUX: It's not drawing.

6 THE WITNESS: Oh, 12 YO, I don't know if you can
7 see that.

8 THE COURT: Top right-hand corner in the green.

9 THE WITNESS: That is actually good right there,
10 right where you are. "12-14 YO cute boy" -- oh, I'm sorry.

11 MS. CARTIER-GIROUX: There you go.

12 THE WITNESS: I don't want to mess everything
13 up. I don't want to set us back.

14 MS. CARTIER-GIROUX: You're not.

15 THE WITNESS: Cool. Right there. That one.

16 So as the end of that file title you see MP.4.
17 That is a file extension. And that MP.4 is a number of
18 different file extensions that tell your machine this is a
19 video.

20 My machine is set, the default setting on my
21 machine on this day is to play any .MP4 titles, you know,
22 file extensions using VLC Media Player.

23 The ones with the Windows icon, like this one up
24 here, (inaudible) the one right there, is .WMV. For
25 whatever reason, VLC wasn't set as the default player

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1 for .WMV files at that time.

2 THE COURT: Okay.

3 THE WITNESS: If it was, they would all be
4 pylons, you know, those as well. So there's a number of
5 different kinds of videos, MP4, you know, WAV files, AVI,
6 .AVI is another one.

7 So depending on which, whichever one is set for
8 the default for that particular app, that media player will
9 play.

10 THE COURT: Okay. Thank you.

11 BY MS. CARTIER-GIROUX:

12 Q. Let's look at 2C17.

13 In 2C17 it looks like you're pulling on -- down
14 on one of the tabs. What are you -- what are you doing?

15 A. I am changing the size of the -- I'm making sure
16 that the icons are as big as possible because that lets me
17 read the file titles a little easier, a little quicker.

18 Q. Okay. Let's look at 2C18.

19 What did you do with 2C18?

20 A. That is, I believe, an alphabetical listing. I
21 arranged them by title.

22 Q. Okay.

23 A. And that is sometimes a faster way for me to scan
24 the list and find titles with phrases consistent with child
25 pornography.

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1 Q. Okay. Does it also help you see the size of the
2 file?

3 A. It does.

4 Q. Also on this page, on the 2C18, are you able to see
5 the last modification date of the file?

6 A. Yes.

7 Q. Okay. And when you were looking at these 838
8 elements, was there a date that appeared to be fairly
9 consistent throughout?

10 A. It appears March 21, 2015.

11 Q. Okay. And is it fair to say that the dates within
12 that were either March 21st, 2015, or within three to four
13 days from that particular day?

14 A. It appears as though, yes, from what I see here,
15 yes.

16 Q. Okay. But the earliest date appears to be March
17 21st, 2015?

18 A. Yes.

19 Q. Let's look at 2C19.

20 What are we doing in 2C19?

21 A. Hovering over one of the videos that the title looks
22 like "NUD_boy.mp4."

23 Q. And then 2C20?

24 Same thing?

25 A. Yes, I'm still on that particular video.

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1 Q. Then 2C21?

2 A. Now I'm hovering over another file title that is a
3 video "10-year-old boy rides dad 17 seconds.WMV."

4 Q. Let's go to 2C22.

5 What are you looking at there?

6 A. Another video titled "9Yboycum.MP4."

7 Q. And 2C23?

8 A. That is a file titled "vid-2015" and then some of
9 it's obscured.

10 Q. Okay.

11 A. That's another video file --

12 Q. 2C24?

13 A. Another video file titled "11 years old cums while
14 fucking videos," and then there's some more to it.

15 Q. Okay. 2C25?

16 A. "19 YO fucks 9 YO movie 001.WMV."

17 Q. 20 -- 2C26.

18 A. "Best From Boy Porn," I'm sorry, it's obscured. I'm
19 queuing all these for download. These are the files I'm
20 selecting and queuing for download.

21 Q. And as you were going through the 838 videos that
22 you were looking, did you -- did you come to a conclusion
23 that the majority of them appear to be child exploitation
24 videos?

25 A. Yes.

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1 Q. Let's go to 2C27.

2 A. Okay.

3 Q. Is that similarly a title that appears to be --

4 A. Yes. "11 YO boy I met at the park came home" with
5 -- or "WI..."

6 Q. Let's go to 2C29.

7 A. That -- well, the one highlighted up above is "Best
8 From Boy Porn.BB AVI video."

9 Q. Okay. So at this point you're just trying to queue
10 them up to download?

11 A. Correct.

12 Q. Okay. And because you don't have the ultimate
13 subscription, do you have to download one at a time?

14 A. Yes. You have to wait for each download to
15 complete.

16 Q. Okay. Let's go to 2C30.

17 A. Okay. This one the highlighted video is "boy +
18 peeing + on + dad" asterisks "video" is followed by some
19 more asterisks, and then the rest of the title.

20 Q. All right. 2C31, what is the next video you're
21 downloading?

22 A. Yes. "12YO," and I'm not sure, "MP4."

23 Q. Okay. And 2C32?

24 A. "10 YO chubby show.MP4."

25 Q. Okay. And then 2C33?

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1 A. I think it's Lula. Is that Lula? I'm not sure.
2 But the initial one -- I'm sorry, I can't read that very
3 well. But then it says, "9 YO boy and" man -- "and men in
4 car," followed by a word that got cut off good because
5 it's -- can't see the whole title.

6 Q. Okay. And let's go to 2C34.

7 A. Yes.

8 Q. What do we see in 2C34?

9 A. Well, when I would queue up the next one in the
10 list, it wouldn't let me start until the prior download had
11 finished, and that is a prompt from GigaTribe to say, hey,
12 if you want to be able to download multiples at one time,
13 you can now upgrade to the ultimate version, 4v.

14 Q. Okay. I'm going to skip ahead to, let's look at --
15 let's go to 2C39.

16 So what are you doing at 2C39?

17 A. 2C39 I'm highlighting the Girls folder again.

18 Q. Okay. Are you going into that folder to start
19 downloading from there now?

20 A. It would appear so, yes.

21 Q. Okay. Let's look at 2C40.

22 A. That is the list of files contained within the Girls
23 folder.

24 Q. Okay. And what are you clicked on to?

25 A. I've highlighted "2012 man boy and girl.AVI."

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1 Q. Let's go to 2C41.

2 A. That is the file titled "5 YO toddler girl
3 fuck.MPG."

4 Q. And then 2C42? I think that's the same, actually.

5 A. Yes, same file title as last.

6 Q. So let's go to 2C43.

7 A. 2C43 is a series of exclamation points, "Kids box-
8 Thai Lolita-Lolita collection." And Lolita is another very
9 common term for a young girl.

10 Q. Let's go to 2C44.

11 A. "PTHC," which is preteen hard core, "boy mom 6. -- I
12 think it says "03" and then ".FLB," which is another title
13 of video file extension.

14 Q. Okay. And then 2C45?

15 A. "Zoo pedophilia 10 YO school girl," and it looks
16 like "MAD 03," and then a series of numbers.

17 Q. Okay. Let's look at 2C46.

18 What do we see in 2C46?

19 A. 2C46 is the transfers tab. And that shows all the
20 videos that I've queued for download so far and how much of
21 that video is downloaded.

22 The ones with the green bars tell me that that
23 is complete. The ones with the open blank are queued and
24 have not begun.

25 And the one in the middle there with the blue

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1 bar is currently downloading.

2 Q. Okay. Let's look at 2C47.

3 A. That is a -- that's the same page.

4 Q. That's the same page?

5 A. That's very similar, yes, showing that one is still
6 downloading.

7 Q. How many downloads were you able to accomplish
8 during the session? How many video files?

9 A. I believe it was 24.

10 Q. Okay. And let's look at 2C49, actually. So what do
11 we see in 2C49 now?

12 A. That is CommView. Now I'm checking it again to make
13 sure that, first of all, that it's still running; and,
14 second of all, because I want to be sure that the IP
15 address that I'm exchanging with has the high numbers of
16 packet transfer.

17 Q. Okay. And let's go -- and the IP address that you
18 are downloading from, the first one you already told us is
19 yours. But what is that second one?

20 A. 68.104.2.249.

21 Q. Is that the same IP address that you saw earlier on
22 in your session?

23 A. Yes.

24 Q. Okay. Let's go to 2C50.

25 What do we see in 2C50?

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1 A. That is the same CommView screen, but I moved the
2 view over a little bit, and I'm looking in that one, I'm
3 just trying to show the direction that most of the packet
4 transfer's coming -- is in. So I'm downloading from him.
5 Or that user, I'm sorry, I'm downloading from lars45, that
6 user.

7 And then it tells you what port it's coming in
8 and some other stuff. But I believe that I'm just trying
9 to show the whole view of the Comcast --

10 Q. Of the Comcast, okay.

11 A. -- display.

12 Q. Let's go to 2C51.

13 A. Okay. That's the end view. So the slider bar in
14 that window right there, I've moved it all the way over to
15 the right. And that, again, is showing me -- if you look
16 at the bytes here, that's showing me that lion's share of
17 what is coming in -- or to my computer, is from that IP
18 address.

19 Q. Okay. So is that fair to say that there will be
20 confirmation for you of where the information is being --

21 A. Yes.

22 Q. -- brought into?

23 A. Yes.

24 Q. Okay. Go ahead and look -- take a look at 2C52 and
25 then 2C53, you can do them all at the same time, 2C54 --

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1 you have the book in front of you. It's better to do it
2 from --

3 A. Yes.

4 Q. -- 2C55 and 2C56.

5 What's being done in those --

6 A. That's a continuation of me highlighting more videos
7 for a possible download. And I do that, again, to queue up
8 more. But I also do that to show whatever investigator
9 ends up with this -- so let's say the session was
10 terminated quickly and I couldn't download those videos,
11 I'm showing on the video all the types of files that it
12 appears as though this person is sharing. So I'm trying to
13 at least communicate that with whoever ends up with this
14 case, be it me or somebody else.

15 Q. Okay. And then 2C57.

16 A. That is the -- that is another screenshot of the
17 transfers from lars45.

18 Q. Okay.

19 A. And there's some more that have been queued up by
20 me.

21 Q. Did you -- were you able -- you indicated that you
22 were able to download approximately 24 video files?

23 A. Yes.

24 Q. Did you view those video files?

25 A. I did.

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1 Q. Based on your training and experience, did it appear
2 that some of those video files, not all of them, contained
3 child pornography?

4 A. Yes.

5 Q. When you say that, what makes you decide that in
6 your -- based on your experience?

7 A. Well, the definition of child pornography is lewd
8 and lascivious display of the genitals. That's one of
9 them. And it's also sexual acts involving what appears to
10 be a minor child.

11 And in these videos, the ones that I identified
12 as containing it contained what appeared to be minor and,
13 in many cases, prepubescent children in various sexual acts
14 with, you know, adults, adult males.

15 Q. Okay. And did you make a -- is there a -- did you
16 basically provide a CDR to the investigator, the ultimate
17 investigator in the case of these downloads?

18 A. I did.

19 Q. Can you look at Exhibit 1 for identification.

20 Before coming in here to testify, did you -- did
21 you view Exhibit 1 for identification?

22 A. I did.

23 Q. And what did you find Exhibit 1 to be?

24 A. That contains the videos that were downloaded from
25 user lars45.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. By you on September 15th -- or September 14th, 2015?

2 A. Yes.

3 MS. CARTIER-GIROUX: At this time I'd move to
4 admit Government's Exhibit 1.

5 THE COURT: Any objection?

6 MR. DURHAM: No objection.

7 THE COURT: Exhibit 1 will be admitted.

8 (Government's Exhibit 1 received.)

9 MS. CARTIER-GIROUX: Court's indulgence.

10 THE COURT: While you're doing that, let me just
11 ask the witness. One of the titles used the word "box."

12 Is that a term of art? Does that mean
13 something? Or is it just a box, like a moving box, or does
14 box mean something?

15 THE WITNESS: To be entirely honest, I'm not
16 sure.

17 THE COURT: Okay. That's fine. I was just
18 wondering.

19 THE WITNESS: That's not a -- that's not -- some
20 of them have the word "kids box." That's -- and
21 sometimes -- and I don't know in that case, but in some
22 cases that is indicative of a copulation. Sometimes
23 they'll put together a bunch of kid videos, and they'll
24 call it a box video, kids box video.

25 But that's -- I'm not -- I couldn't say that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 that's what that was.

2 THE COURT: Okay. Thank you. I appreciate
3 that.

4 MS. CARTIER-GIROUX: Could you -- I'm sorry,
5 Judge. Can I ask him one more --

6 THE COURT: Of course, yes.

7 MS. CARTIER-GIROUX: Just for clarification.
8 Could we look at 2C45.

9 BY MS. CARTIER-GIROUX:

10 Q. On some of the screenshots you can see at the bottom
11 portion down here -- do you see where I'm pointing?

12 A. Yes.

13 Q. You can see what appears to be -- what is that?
14 What are we seeing?

15 A. That is -- you're seeing kind of a blowup of what I
16 have highlighted up above, and that is showing the status
17 of it, which is queued by me, and who it's coming from,
18 which is lars45.

19 Q. Okay. And above it, that bar, that means that --
20 what does that bar show?

21 A. Well, there's a little down arrow right here, which
22 is pretty hard to see.

23 Q. Right.

24 A. That indicates I'm going to download. And that bar
25 is telling me that that download either hasn't started or

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1 is just -- is still empty. Nothing's been downloaded with
2 regard to that file yet.

3 Q. And above it, what is that line?

4 A. That's the title. "Zoo pedophilia, 10 YO school
5 girl mad 03_125_A1 dog and" girl, or "GRL fucking hard
6 core," I don't know if it's CLP, but ".WMV."

7 MS. CARTIER-GIROUX: Thank you.

8 I have no further questions at this point. I
9 pass the witness.

10 THE COURT: Defense. Mr. Durham?

11 CROSS-EXAMINATION

12 BY MR. DURHAM:

13 Q. Good morning, Detective Ahmed.

14 A. Good morning.

15 Q. So the first time that you were accepted into lars45
16 group of friends was August 3rd, 2015?

17 A. It appears as though I accepted him into my group
18 August 3rd, 2015, yes, sir.

19 Q. Okay. Now, you've explained that the -- this is a
20 French program, so the month and date is backwards;
21 correct?

22 A. I -- that's why I assume it's listed that way,
23 because in Europe they list the day first and then the
24 month.

25 Q. Okay. If I could refer you to Exhibit 2B2. That's

—TRANSCRIBED FROM DIGITAL RECORDING—

1 the printout of the screenshot, correct, of the chat
2 between you and lars45?

3 A. Yes.

4 Q. So after lars45 it says "04-08." It's your
5 testimony that would have been August 4th; correct?

6 A. Yes.

7 Q. Of 2015. Next to that it looks like it has a
8 timestamp, 0147?

9 A. Yes.

10 Q. What time zone are we talking about with that
11 timestamp?

12 A. I'm not positive if it's UTC. I'm not sure. I
13 can't say for certain. So mine with -- if you look down
14 where it says pedotraderjoe, it has 1313; and if we compare
15 that with the -- if we compare that with my documentation
16 of the date and time of the download, and I'm going off the
17 top of my head, but I believe it was around 9:00 a.m., mine
18 says 9:00 a.m., but on this it says 1313.

19 So I think that's UTC. I think it's just a
20 different time conversion. So that's their -- their time
21 conversion.

22 Q. Okay.

23 THE COURT: (Indiscernible) Buffalo?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay. Thank you.

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1 BY MR. DURHAM:

2 Q. So it's your best guess, based on those numbers,
3 that the timestamps here would actually be about seven
4 hours earlier if we're talking about UTC time?

5 A. Off the top of my head, I'm not sure, because I
6 think that the conversion for East Coast time from UTC -- I
7 know it for GMT, for Greenwich, meaning it's five hours.

8 I don't know what it would be on the West Coast.
9 And any time I need to convert, I use an app for that. So
10 I put that in, and it tells me. That's all. So I'm not
11 positive.

12 Q. Okay. Okay.

13 So 0147, that's not actually 1:47 in the
14 morning; is that fair to say?

15 A. Not East Coast time, no.

16 Q. And not UTC time either?

17 A. I'm not positive.

18 Q. Okay.

19 A. Honestly.

20 Q. Now, the folders, once you were able to log in, you
21 were given the password of 9090; correct?

22 A. Yes.

23 Q. And that was the same password for all three
24 folders?

25 A. Yes.

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1 Q. Okay. And those folders were organized into three
2 separate or three different names; correct?

3 A. Yes.

4 Q. You had "AAA" was one of the folders?

5 A. Correct.

6 Q. "BBB," and a folder titled "Girls"?

7 A. Yes.

8 Q. And fair to say that the "Girls" folder contained
9 videos of females?

10 A. It did have some videos of females. I can't recall
11 all of them, but, yes, there was some, yes.

12 Q. So when you contacted -- or, I'm sorry, when you
13 started to download these files September 14th, 2015, that
14 would have been 9:38 Eastern Time?

15 A. I believe so, yes.

16 Q. Okay. So that would have been 6:38 Pacific Time?

17 A. Correct.

18 Q. Okay. And it indicates under the lars45 on that
19 same exhibit that it says "connected," and then in
20 parentheses "away"?

21 A. Yes.

22 Q. Does that mean that the user's not necessarily at
23 their computer at that time?

24 A. It could, yes.

25 Q. And it's your understanding based upon your review

—TRANSCRIBED FROM DIGITAL RECORDING—

1 of these files that were in these folders that the majority
2 of these files originated around March 21st, 2015?

3 A. I don't know that they originated then. It could be
4 that the -- when you create a user profile in GigaTribe --
5 so, you know, I sign up for GigaTribe, and on that when I
6 sign up, I designate a group or a file to be shared.

7 And maybe if that was the date that lars45
8 started and said, okay, I'm going to share these files,
9 that might be why that date is -- it says "date modified,"
10 that might be what that's for.

11 But date modified, I -- again, I can't say with
12 certainty that that's what it's for, but usually that's how
13 it would work.

14 Q. Okay. Now, you connected the IP address, or you
15 were able to retrieve the IP address; correct?

16 A. Yes.

17 Q. Okay. And an IP address, is that -- does that
18 correspond with a specific device or location?

19 A. It corresponds with a location.

20 Q. Okay. And how is that IP address generated?

21 A. It is -- well, to access the Internet, you have to
22 have a pathway to do it. And an Internet service provider
23 is assigned a group of addresses. So they get assigned a
24 number range that they're allowed to assign to whomever is
25 using the Internet.

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1 So that -- that Internet connection at that date
2 and time was assigned that number by the Internet service
3 provider, and that's how they, you know, bill you for
4 service, what have you. This is how they keep an account
5 of who's getting Internet service.

6 Q. Okay. Now, you generated a report based on this
7 September 14th download; correct?

8 A. Yes.

9 Q. Okay. And in that report you indicated that you had
10 downloaded 24 video files from the user lars45?

11 A. Yes.

12 Q. And 22 of them contained images of child
13 pornography?

14 A. Yes.

15 Q. Okay. In your report did you indicate -- did you
16 mention the August 4th chat with Lars when the password was
17 provided?

18 A. I'm sorry, but I don't recall. If I could look at
19 the report, I could tell you, but I don't recall.

20 Q. Would it refresh your recollection if I showed you
21 the report?

22 A. Yeah. I have a copy of it.

23 Q. Would you take a minute and look at that real quick?

24 A. Sure. Thanks.

25 No, it does not.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. Okay. Does it reflect when you first were accepted
2 into lars45 group on August 3rd in your report?

3 A. No, it does not.

4 Q. Okay. Your report doesn't indicate the specific
5 times when he was accepted -- or you were accepted into
6 this group; correct?

7 A. No.

8 Q. And it does not date -- state the specific times on
9 August 4th when the password was provided; correct?

10 A. No, it does not.

11 MR. DURHAM: Court's indulgence?

12 THE COURT: Yes.

13 MR. DURHAM: Pass the witness, Your Honor.

14 THE COURT: Redirect?

15 MS. CARTIER-GIROUX: Yes. Very briefly.

16 REDIRECT EXAMINATION

17 BY MS. CARTIER-GIROUX:

18 Q. Now, you were just asked whether certain items were
19 in your report or not in your report. The information with
20 regard specifically to when he became -- lars45 became your
21 friend and him -- the time and date of him giving you the
22 password, is that contained in the video capture that is
23 Exhibit 2A?

24 A. Yes. The -- the document -- this 302, the reason
25 it's not in there is because this document is a reference

—TRANSCRIBED FROM DIGITAL RECORDING—

1 strictly to that date and time in that section.

2 Q. Okay.

3 A. So I didn't preface it with that. None of that goes
4 in there. Just the way that this one is structured.
5 That's why we do the video capture, correct.

6 Q. And you -- you were asked the question about the
7 date modified for the March 21st, 2015, date. And you
8 indicated on cross-examination that it could have been the
9 date that lars45 was created; correct?

10 A. Yeah. Well, maybe not the date that lars45 was
11 created, but it was the date that the user -- it could have
12 been, okay? I can't say this positively. But it could
13 have been the date that the user lars45 designated those
14 files to be shared on GigaTribe.

15 Q. Okay. So it could have been a date where a folder
16 was created, and those files are moved into the folder;
17 correct?

18 A. Yes.

19 Q. Or it could have been a date where that folder
20 became viewable to you?

21 A. Yes.

22 MS. CARTIER-GIROUX: Okay. Thank you.

23 THE COURT: Any more cross?

24 MR. DURHAM: No, Your Honor.

25 THE COURT: All right. So it's 11:34.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 We'll go ahead and let Mr. Ahmed step down. And
2 we don't -- do we expect to have to recall him? Is he free
3 to go?

4 MS. CARTIER-GIROUX: No, Your Honor. He can be
5 released.

6 THE COURT: All right. We'll go ahead and
7 release you. Take with you what you brought, and leave the
8 exhibits we have to keep.

9 THE WITNESS: Oh, yeah. I'm just closing this
10 up.

11 THE COURT: All right. Thank you.

12 And please be careful on the way down with the
13 steps and wires.

14 (The witness was excused.)

15 THE COURT: Do you want to get started,
16 Ms. Roohani? We have a couple, maybe just 20 minutes left.

17 MS. ROOHANI: We can get started and then
18 continue after lunch.

19 THE COURT: All right. Let's do that. Let's
20 call the next witness, please.

21 MS. ROOHANI: The United States calls Sue
22 Flaherty.

23 COURTROOM ADMINISTRATOR: Please raise your
24 right hand.

25 You do solemnly swear that the testimony you

—TRANSCRIBED FROM DIGITAL RECORDING—

1 shall give in the cause now before the Court shall be the
2 truth, the whole truth, and nothing but the truth, so help
3 you God?

4 THE WITNESS: Yes, sir, I do.

5 COURTROOM ADMINISTRATOR: Thank you. You may be
6 seated.

7 THE WITNESS: Thank you.

8 COURTROOM ADMINISTRATOR: Please state and spell
9 your full name for the record.

10 THE WITNESS: Sue Flaherty. Last name
11 F-l-a-h-e-r-t-y.

12 SUE FLAHERTY

13 called as a witness on behalf of the
14 Government, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. ROOHANI:

17 Q. Ms. Flaherty, who is your employer?

18 A. I'm a special agent with the FBI here in Las Vegas.

19 Q. And how long have you been a special agent with the
20 FBI?

21 A. A little over 20 years.

22 Q. What are your current duties and responsibilities?

23 A. I'm assigned to the Child Exploitation Task Force.

24 Q. And what are the responsibilities of that task
25 force?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. We investigate primarily Internet crimes against
2 children, child exploitative matters.

3 Q. Were you involved in the investigation of the
4 defendant, Jan Rouven Fuechtener?

5 A. Yes, I was.

6 Q. Okay. And on what date did you become involved?

7 A. It was roughly mid January of last year.

8 Q. And what was happening on that date?

9 A. We have received information of an individual that
10 was utilizing GigaTribe and was sharing files depicting
11 child pornography.

12 Q. And did you or a member of your team obtain a search
13 warrant?

14 A. Yes.

15 Q. And did your involvement begin on the day of the
16 execution of the search warrant?

17 A. Yes. On January 23rd of 2015 our task force
18 executed a search warrant.

19 Q. Okay. What were your duties on the day of the
20 execution of the search warrant?

21 A. I was assigned as a search team leader.

22 Q. And what does that mean?

23 A. The search team leader ensures that search protocols
24 are adhered to, evidence is tagged and recovered,
25 photographed, documented, and a property receipt -- that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 search procedures are followed.

2 Q. And does that sometimes include previewing certain
3 devices on scene?

4 A. Yes, it will.

5 Q. Okay. When you make entry into the house, what is
6 the typical entry search protocol as it relates to
7 photographing the scene?

8 A. After -- after the residence is secured, we do
9 what's called entry photos. Our photographer will
10 photograph room by room. Each room is identified with a
11 letter or a number identifying the location of that room
12 within the residence.

13 The photographs are logged into a photo log to
14 represent what photo number was -- and what was
15 photographed in that number.

16 Q. And where are you when the person is taking
17 photographs?

18 A. On that particular day, I walked through the
19 residence with the photographer and the individual doing
20 the photo log.

21 Q. Okay. And when you were able to walk through the
22 residence, were you able to view each room as it existed
23 that day?

24 A. Yes, I was.

25 Q. Okay. Were you able to see the layout of the house?

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1 A. Yes, I was.

2 Q. In total how many devices and items were collected
3 that day?

4 A. On that day, there were 37 items that were
5 categorized on the evidence recovery log.

6 Q. Okay. Go ahead and open up that big binder in front
7 of you to Exhibits 3A, 3B, 3C, and 3D. Take a look at
8 those.

9 COURTROOM ADMINISTRATOR: What were those
10 exhibit numbers?

11 MS. ROOHANI: 3A, 3B, 3C, and 3D. They're all
12 under tab 3.

13 THE WITNESS: Okay.

14 BY MS. ROOHANI:

15 Q. Do you recognize those?

16 A. Yes, I do.

17 Q. What are they?

18 A. 3A is a sketch of the -- what was identified as a
19 casita, a small dwelling to the rear of the residence.

20 Q. Okay. What is 3B?

21 A. 3B is the sketch of the first floor of the main
22 house of the target residence.

23 Q. What is 3C?

24 A. And 3C is the second floor of the main house.

25 Q. Okay. What is 3D?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. And 3D is a diagram, sketch diagram of the layout of
2 where the main house was in proximity to the garage and a
3 front office area.

4 Q. Okay. Are these diagrams a fair and accurate
5 depiction of the layout of the defendant's residence the
6 day the search warrant was executed?

7 A. Yes, they are.

8 Q. And are these the same as these demonstrative
9 exhibits that we have here?

10 Let me ask you this. Have you seen these
11 demonstrative exhibits before?

12 A. Yes, I have.

13 Q. Where have you seen them?

14 A. I've seen them in your office.

15 Q. Okay. And they are the same as -- they're just
16 blown-up copies of 3A, 3B, 3C, and 3D; is that correct?

17 A. Yes, they are.

18 MS. ROOHANI: Your Honor, I would move to admit
19 these as exhibits.

20 THE COURT: So you're moving to admit exhibits
21 3A through D, but not the blown-up demonstrative?

22 MS. ROOHANI: Also 3A through D only because I'm
23 going to later have her mark on the -- those exhibits.

24 So if the defense would like to take a look at
25 these, I can represent that they're direct copies of --

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1 THE COURT: Okay. Any objection, Mr. Marchese?

2 MR. MARCHESE: No, Your Honor.

3 And in the future I would ask that before
4 exhibits are published that they be admitted into evidence.

5 But no objection as to these exhibits.

6 THE COURT: All right.

7 (Government's Exhibits 3A, 3B, 3C, 3D
8 received.)

9 BY MS. ROOHANI:

10 Q. Special Agent Flaherty, as part of your duties as
11 evidence custodian, did you fill out a receipt of a
12 property log?

13 A. Yes. That was being filled out as evidence was
14 being seized.

15 Q. And -- go ahead.

16 A. Oh, at the end of -- or the conclusion of the
17 search, the copy -- a copy, a signed copy is left at the
18 residence, along with a copy of the search warrant.

19 Q. And does that typically include what piece of
20 evidence was found where?

21 A. It will include -- the properties received includes
22 what evidence is being seized from the residence. The
23 evidence recovery log details out where the evidence was
24 recovered.

25 Q. And were you in charge of reviewing the logs to the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 extent that others filled them out that day?

2 A. Yes, I was.

3 Q. And when you reviewed them, did you double check
4 their work?

5 A. Yes, I did.

6 Q. Were those logs fair and accurate representations of
7 the evidence as it was collected that day?

8 A. Yes, it was.

9 Q. Okay. You said that you made sure that the evidence
10 was photographed. While the photos were being taken, are
11 you just reviewing the work of the person taking the photo
12 and the person making the log?

13 A. As -- as the entry photos were being taken, I was
14 with the photographer. After the search is initiated, I am
15 there as evidence is being collected.

16 Standard procedures is that the photographer
17 photographs evidence in place.

18 Q. And those entry photographs that were taken and then
19 the -- based upon -- let me rephrase that.

20 The entry photographs that were taken, were
21 those fair -- did you review those photos later on?

22 A. Yes, I did.

23 Q. And were those fair and accurate depictions of the
24 residence as you made entry?

25 A. Yes. Our procedure for entry photographs, as we go

—TRANSCRIBED FROM DIGITAL RECORDING—

1 through, I label the rooms with numbers or letters, the
2 photographer then photographs the room as it is, as we made
3 entry.

4 Q. Okay. And then when the -- when you're doing that
5 initial entry into the house, are you also noticing where
6 certain devices might be?

7 A. Yes. If they're obvious in the room, I will take
8 note of them.

9 Q. Okay. And so when you later on reviewed photos of
10 devices in place, were those also fair and accurate
11 depictions as you saw them when you made entry into the
12 house?

13 A. Yes, they were.

14 Q. Okay. At some point in the investigation, is each
15 device collected assigned an evidence number?

16 A. Yes. As the evidence is placed into our evidence
17 vault, it's assigned a specific number that documents what
18 that item is to the degree of serial number and model
19 numbers.

20 Q. Okay. I would like for you to give us the tour of
21 this house using Exhibits 3A, 3B, 3C, and 3D.

22 So I think you mentioned that 3D was the entry
23 area?

24 A. Yes.

25 Q. So can you -- and I see that they're also numbered

—TRANSCRIBED FROM DIGITAL RECORDING—

1 with certain letters.

2 A. So start with 3D?

3 Q. Yes.

4 A. Okay.

5 Q. And if you could also indicate -- if you're
6 referring to a room, if you could indicate the letters that
7 you're being -- referring to as well, that would be
8 helpful.

9 A. Sure. So Exhibit 3D is a diagram that designates
10 where the main house is, a courtyard, and a garage, and
11 then an office area.

12 So upon entry from the street, off to the left
13 would be the garage area identified as AV, as in Victor.

14 Off to the right was a front office area
15 identified as AW.

16 Within the office area is a bathroom and a
17 closet area identified as AY and AX.

18 Continuing on through the courtyard --

19 THE COURT: Well, which way is the street? I'm
20 sorry.

21 THE WITNESS: Okay. The street is to the bottom
22 of the diagram.

23 THE COURT: Okay.

24 THE WITNESS: So the bottom of the diagram is
25 where you would make entry into the outer perimeter of the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 residence.

2 Then, as I mentioned, off to the right was the
3 garage area.

4 And then off to the left was, like, a front
5 office area.

6 THE COURT: Okay.

7 THE WITNESS: Then the courtyard, if you
8 continue on straight up through the courtyard, it's the
9 front door of the residence.

10 And then in the diagram, it's depicted where the
11 main house is.

12 THE COURT: Okay.

13 BY MS. ROOHANI:

14 Q. I think you mentioned that 3B is the first floor of
15 the main residence. So can you -- let's go there and
16 continue the tour.

17 A. Yes. 3B is a diagram of the first floor of the main
18 house.

19 Starting at the bottom of the diagram is where
20 the front entryway into the house is.

21 There's closet spaces off to the right and left
22 identified as AD, AA, and AC.

23 Continuing on into the main house, off to the
24 right is, like, a formal dining room area. It's a large
25 open room identified as AB.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Off to the left is a spiral-type staircase
2 leading up to the second floor.

3 Continuing on straight into the house is, like,
4 a formal living room area identified as AE.

5 Off to the left is a bedroom identified as AF.

6 Within that bedroom is a bathroom, AG.

7 Continuing on from around, down on the diagram,
8 is a second bedroom identified as AH.

9 From the formal dining room area off to the
10 right, you continue on into a kitchen area. Well, a
11 hallway leading in the pantry.

12 The hallway is AJ.

13 The pantry is AK.

14 Then the kitchen area is AL.

15 Within the kitchen area, there's several kitchen
16 islands.

17 Straight on is an informal dining area
18 identified as AN.

19 Off to the right of that is a bar-type area
20 identified as AM.

21 Immediately to the right of the bar area is a
22 door that leads out to the back patio area.

23 Down from the patio door is an informal living
24 room area identified as AO.

25 Continuing on around, it's a hallway identified

—TRANSCRIBED FROM DIGITAL RECORDING—

1 as AT.

2 There's a secondary staircase that leads up to
3 the second floor to the right of the hall.

4 THE COURT: Wait. I can't see AO. Oh, I
5 thought AO was the kitchen.

6 THE WITNESS: AO is, like, an informal living
7 room area.

8 AL is the kitchen area.

9 THE COURT: Oh, okay. Thank you.

10 THE WITNESS: Sure. From the hallway identified
11 as AT, to the right is a laundry room area identified as
12 AR.

13 And there's additional closets within that
14 laundry area.

15 Then straight on down the hallway is a door
16 leading into the garage area, which is identified as AU.
17 BY MS. ROOHANI:

18 Q. Okay. So that's the end of the first floor.

19 The second floor is Exhibit 3C.

20 A. Yes. Exhibit 3C is a sketch of the second floor of
21 the main house. In the center of the sketch there's where
22 the winding staircase leads up to the second floor.

23 As you continue around -- when you reach the
24 second floor, there's a closet space off to the right, AZ.

25 You continue on around. And then there's a

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1 doorway to the master bedroom, which is identified as A1.

2 To the left of the master bedroom here's a hall
3 that leads to a study, a study-type area identified as A2.

4 From the study area there's another hallway that
5 goes down to where there's a bathroom A4 to the right.

6 And then A3 is the hallway that leads to a
7 closet area identified as A5, and then a workout room
8 identified as A6.

9 Exiting the master bedroom, if you continue on
10 to the right down that hallway, there's a closet on the
11 left that's identified as A8.

12 And then to the right is another bedroom
13 identified as A9.

14 Within that bedroom is a -- two closet spaces,
15 A10 -- or, I'm sorry, one closet space, A10, and a
16 bathroom, A11.

17 Exiting that spare bedroom is a hallway where
18 you can go left or right. If you go right, to the top of
19 the diagram is another spare bedroom identified as A12, a
20 bathroom area within that, and a closet within that spare
21 bedroom.

22 Exiting that bedroom coming out to the left is
23 an office-type space identified as A15. Within that office
24 is a closet, A17, and then another bathroom area, A16.

25 Exiting out of that office space is where

—TRANSCRIBED FROM DIGITAL RECORDING—

1 there's a secondary staircase leading to the second floor.

2 Just beyond that staircase is another office
3 area identified as A18 and a closet space within that
4 identified as A20.

5 Exiting that office space and to the bottom of
6 the diagram is another office space identified as A21.
7 Both of those, A18 and A21, have separate bathrooms within
8 them.

9 Q. Special Agent Flaherty, just to be clear, when you
10 say "spare bedroom," what caused you to believe that that
11 was used in the bedroom?

12 A. The two rooms, A9 and A12, identified as bedrooms,
13 have beds in them. They appeared to be set up as a spare
14 bedroom type space.

15 Q. And do you say that there's spare bedrooms because
16 they don't indicate that a person might be living there at
17 that particular time?

18 A. I'm sorry?

19 Q. When you say that they're spare bedroom, what caused
20 you to believe that it was spare and it was not being lived
21 in at that time?

22 A. There were clothing items within the spare bedrooms,
23 but they didn't have enormous amount of clothing items. It
24 wasn't a lived-in-type bedroom.

25 Q. And when you said there's an office space, what

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1 caused you to believe that it was an office space?

2 A. The three rooms identified as office spaces, A15,
3 A18, and A21, all three of those rooms had desks, chairs,
4 computers. There were no beds or dressers in those
5 bedrooms.

6 Q. Okay. Let's continue to the --

7 THE COURT: Well, it's actually 11:53 -- now
8 it's 11:54. So we're going to go ahead and take our break
9 so that Mr. Durham can make his meeting.

10 What time do you want to be back?

11 Mr. Durham, would this be your witness to
12 cross-examine?

13 MR. DURHAM: No, Your Honor.

14 THE COURT: So is it okay if we come back and
15 start up again at 1:10?

16 MR. MARCHESE: I'll leave it up to the Court's
17 pleasure.

18 THE COURT: I don't want to handicap you. So
19 it's up to you. If you want, we can wait until 2:00.

20 MR. SANFT: Your Honor, the only issue is that
21 we don't know what the government's next witness will be
22 after Ms. Flaherty; so based upon that, it may be somebody
23 that Mr. Durham is assigned to cross-examine. So if we
24 know that information --

25 THE COURT: So, Ms. Roohani, who did you plan to

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1 call after Ms. Flaherty?

2 MR. MARCHESE: Can we just do 1:45, Your Honor?
3 If Mr. Durham isn't back by that time, we can begin.

4 THE COURT: Okay.

5 MS. ROOHANI: It will be Al Giangregorio of
6 Homeland Security Investigations.

7 THE COURT: All right. So 1:45?

8 MR. MARCHESE: Please.

9 THE COURT: All right. We'll be back here at
10 1:45.

11 You're still under oath. But you can go have
12 lunch and stretch and go to the bathroom. Just don't talk
13 to anyone about your testimony.

14 THE WITNESS: Thank you.

15 THE COURT: You're welcome. Thank you.

16 (The noon recess was taken at 11:54 p.m.)

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1 LAS VEGAS, NEVADA, NOVEMBER 14, 2016, 1:51 P.M.

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4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. You may be seated.

6 COURTROOM ADMINISTRATOR: This is the time for
7 the continuation of the bench trial in Case No.

8 2:16-cr-100-GMN-CWH, United States of America versus Jan
9 Rouven Fuechtener.

10 Counsel, please enter your appearance for the
11 record.

12 MS. ROOHANI: Good afternoon, Your Honor. Ellie
13 Roohani and Lisa Cartier-Giroux for the United States,
14 joined by Special Agent Mari Panovich, our case agent.

15 THE COURT: Good afternoon.

16 MR. MARCHESE: Good afternoon, Your Honor. Jess
17 Marchese, Benjamin Durham, Michael Sanft for the defendant,
18 Jan Rouven Fuechtener.

19 THE COURT: All right. And good afternoon.
20 Looks like everyone is back on time. Thank you.

21 Let's go ahead and have Ms. Flaherty resume. Is
22 that --

23 MS. ROOHANI: Your Honor?

24 THE COURT: Did you want to take someone else?

25 MS. ROOHANI: No. We just have one point to

—TRANSCRIBED FROM DIGITAL RECORDING—

1 bring up with the Court before we call Special Agent
2 Flaherty back.

3 THE COURT: Oh, okay.

4 MS. ROOHANI: Judge, I just want to clarify, and
5 I have already talked to Mr. Marchese about it. We
6 received our exhibits today.

7 There is one exhibit where we just have a sticky
8 tab in it, which is Exhibit No. 31. It just says "DB
9 folder."

10 Mr. Marchese has indicated that he had e-mailed
11 it to us, but we have not received it. I don't know if the
12 file is too large. But we still don't have that item.

13 Additionally I asked him, and I believe that
14 Mr. Durham was going to give it to us, Exhibit No. 36
15 appears to be Skype chats. There are over 3,000 Skype
16 chats.

17 These are not legible. So I -- even if I wanted
18 to look through the 3,000 of them, which I don't, I
19 wouldn't be able to find it because I can't read them.

20 If he would provide me, and I think he will,
21 with the Bates stamp numbers, since they would be from our
22 discovery, that would help us greatly and avoid wasting
23 time later on.

24 THE COURT: Okay.

25 MS. ROOHANI: Same difference with the --

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1 there's some GigaTribe chats -- Grindr chats. We received
2 a cert form from Grindr.

3 I obviously do not have any objection if those
4 chats fell within the cert form. I just need to be
5 directed where in the discovery those chats are so I can
6 verify that they are, in fact, covered by the cert form.

7 THE COURT: Okay. So as to the exhibit that's
8 called "DB folder"?

9 MR. MARCHESE: Yes. It's the Dropbox folder,
10 Your Honor. I sent it on November 7th to them. It's a
11 large file. I put it on a PDF. It's about 90 or so pages.
12 I sent it to the government on the 7th.

13 It didn't come back to me. They were asking me
14 about it. Once again at lunch today, I did the same thing.
15 They're saying they have not received it.

16 So my guess is I'm probably going to have to
17 break it up and send it to them. So that was the issue
18 there.

19 THE COURT: Okay.

20 MR. MARCHESE: So we'll get it to them. It's in
21 their possession too. It's also on the devices, I can
22 represent to the Court.

23 But, regardless, so they don't have to go back
24 and search through the 38 or so devices, I'll just get it
25 to them, and there won't be an issue. And then we'll get

—TRANSCRIBED FROM DIGITAL RECORDING—

1 them the Bates numbers. It's not a problem.

2 The only reason the format they gave us the
3 Skype chats in, she's a hundred percent correct, it's very
4 difficult to read; so what Mr. Durham did was he expanded
5 it slightly; but when he expanded it, the Bates numbers
6 went off the page.

7 So in trying to make it easier, he actually made
8 it more difficult. But we'll get them the range numbers of
9 the chats, and hopefully that will allay any concerns they
10 have.

11 THE COURT: Okay. And can you do that before we
12 start again tomorrow?

13 MR. MARCHESE: Yes.

14 THE COURT: Okay. Thank you.

15 MS. ROOHANI: Thank you.

16 THE COURT: All right. So shall we have
17 Ms. Flaherty come back in?

18 MS. ROOHANI: Yes, Your Honor. Thank you.

19 THE COURT: Good afternoon, Special Agent
20 Flaherty. Come on up. Be careful. They reset up the
21 demonstrative pictures there.

22 THE WITNESS: Thank you.

23 BY MS. ROOHANI:

24 Q. Special Agent Flaherty, before we left off, we were
25 on Government's Trial Exhibit 3B. I just wanted to make

—TRANSCRIBED FROM DIGITAL RECORDING—

1 sure that we had finished and you had identified everything
2 that was on this before we move on to the next one.

3 It's under tab 3 -- 3B is -- I believe it was
4 the -- no, I lied. 3C, which is the second floor.

5 A. Okay. And, no, I -- my apologies. There was a
6 section off of the master bedroom that I did not cover.

7 Q. Okay. Go ahead.

8 A. So off of room A1, the master bedroom, there is a
9 hallway to the right. It was kind of an arch hallway,
10 small hallway. But it leads back into two closet areas;
11 one labeled A15, and the other one labeled A26.

12 And then down from that -- or that hallway leads
13 to a bathroom area.

14 Q. Is that A15 or A25, just to be clear?

15 A. Oh, I'm sorry. The smaller closet's A25, and the
16 larger closet's A26.

17 Q. And A24 is what?

18 A. A24 is the bathroom area.

19 Q. Okay. Anything else on 3C that we haven't
20 discussed? Because I just want to be sure that that's
21 complete. I think we've got all of it.

22 A. No, I believe that's it.

23 Q. Okay. Let's move on to Exhibit 3A, which you
24 indicated is, I believe, the backyard casita area.

25 Can you walk us through what this is, and then

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1 also how will we get to this point from where -- what
2 you've already described?

3 A. Okay. From the first floor of the main house, I
4 indicated there was a door off of the bar/kitchen area,
5 that led to a back patio. In the backyard, there was a
6 large swimming pool. And just behind the swimming pool was
7 a casita, which is diagramed in Exhibit 3A.

8 Q. Okay. Can you walk us through that, please.

9 A. Yes. So the entryway into the casita is off to the
10 left at the bottom of the diagram.

11 Upon entering the casita, it's a large open room
12 identified as BA.

13 As you enter into the large room, to the left is
14 a kitchen area identified as BB. There's an island in the
15 kitchen identified as the number 3.

16 Then proceeding up on the diagram is an open
17 dining room area. There was a dining room table in the
18 center of that room.

19 Also as you enter into room BA, to the left side
20 and to the top of the diagram was a bed, two nightstands.
21 The bed's identified, I believe, as number 4. Two
22 nightstands to the top of the bed. And then there were two
23 tables to the foot of the bed.

24 Just down from the bed was a couch, an end
25 table, another couch, some chairs. Off to the far right of

—TRANSCRIBED FROM DIGITAL RECORDING—

1 the room was a closet identified as BC. And then a
2 bathroom area just down from the closet area identified as
3 BD and BE.

4 Also in the large room identified as BA, to the
5 far right side, the bottom part of the diagram, was a
6 smaller bed.

7 Q. Okay. You identified on -- in the BA area, you said
8 that it was -- there was a bed and it's marked with the
9 number 4. I don't see the number 4. So can you clarify --
10 maybe you misspoke, or maybe I'm just not seeing it.

11 A. It was -- the bed itself, on the far end, it's kind
12 of -- it's a small number. It's just -- it was a numeric
13 identification for the larger bed in the room.

14 Q. Okay. Okay. Now I'm going to show you -- I'm going
15 to have you take a look at -- take a look at Government's
16 Exhibits 4A and 4B. And tell me if you recognize those
17 photos.

18 A. Yes, I do.

19 Q. What are they photos of?

20 A. They're photographs of an Apple laptop that was on
21 the larger bed inside the casita.

22 Q. And 4B?

23 A. 4B is the screen saver, or the log-on screen of that
24 laptop.

25 Q. What was the -- are they a fair and accurate

—TRANSCRIBED FROM DIGITAL RECORDING—

1 depiction of that device as it appeared the day of the
2 execution of the search warrant?

3 A. Yes, they are.

4 Q. And what evidence ID numbers were those assigned?

5 A. Those were entered into evidence and assigned -- 1B1
6 was the Apple laptop.

7 Q. Okay. And was there another device that is perhaps
8 not pictured also in that device?

9 A. Yes, as we were logging in evidence, there was an SD
10 card that was inside the laptop. It was entered into
11 evidence as 1B2.

12 Q. Okay.

13 MS. ROOHANI: Your Honor, I would move to admit
14 Government's Exhibits 4A and 4B into evidence.

15 THE COURT: Any objection?

16 MR. MARCHESE: No, Your Honor.

17 THE COURT: All right. So 4A will be admitted.

18 (Government's Exhibit 4A received.)

19 BY MS. ROOHANI:

20 Q. Special Agent Flaherty, where were these two devices
21 found?

22 And if you need to refer back to the three
23 exhibits, let us know.

24 A. They were located on top of the large bed that was
25 inside the casita in room BA.

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1 Q. Okay. So I'm going to ask you to mark that on the
2 demonstrative.

3 A. Sure.

4 THE COURT: Just to be clear, the question was
5 4A and 4B, right, for admission?

6 MS. ROOHANI: Yes.

7 THE COURT: You moved for both?

8 MS. ROOHANI: Yes, 4A and 4B, yes, Your Honor.

9 THE COURT: And no objection from the defense;
10 is that right?

11 MR. MARCHESE: No, Your Honor.

12 THE COURT: All right. So I apologize. I only
13 actually admitted 4A, not 4A and 4B.

14 So I'll admit both. Thank you.

15 MS. ROOHANI: Okay. Thank you.

16 (Government's Exhibit 4B received.)

17 BY MS. ROOHANI:

18 Q. All right. Go ahead and take a look at Government's
19 Exhibit 5A, 5B, and 5C.

20 And do you recognize those photos?

21 A. Yes, I do.

22 Q. What are they photos of?

23 A. Exhibit 5A is -- was an entry photo that was taken
24 upon entering the casita towards the right top side of the
25 room.

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1 Q. And what is 5B?

2 A. 5B is an Apple -- it was an All-in-One computer that
3 was on one of the tables at the foot of the large bed
4 inside the casita.

5 Q. And what is 5C?

6 A. And 5C is the log-on screen of the Apple All-in-One
7 computer.

8 Q. Are these photos fair and accurate depictions of
9 these devices as they were found on the day of execution of
10 the search warrant?

11 A. Yes, they are.

12 Q. And was this particular Apple All-in-One device
13 pictured in 5B, was that assigned an evidence number?

14 A. Yes, the apple All-in-One was assigned 1B3.

15 Q. Okay.

16 MS. ROOHANI: Your Honor, I would move to admit
17 Exhibits 5A, 5B, and 5C into evidence.

18 THE COURT: 5A, B, and C, any objection?

19 MR. MARCHESE: No, Your Honor.

20 THE COURT: All right. That will be admitted.

21 (Government's Exhibits 5A, 5B, 5C received.)

22 BY MS. ROOHANI:

23 Q. And, Special Agent Flaherty, can I ask you to please
24 mark on the demonstrative where this particular device was
25 found.

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1 Special Agent Flaherty, please take a look at
2 Government's Exhibit 6A and 6B.

3 Do you recognize these photos?

4 A. Yes, I do.

5 Q. What are they photos of?

6 A. Exhibit 6A depicts -- I indicated off of the
7 kitchen, the bar area, there was a door to the back patio.
8 This is the back patio. You can see the door in the center
9 of the photograph.

10 Q. And what is 6B?

11 A. 6B was an external -- or it was a router and
12 external hard drive that was on the back patio.

13 Q. Are these photos a fair and accurate depiction of
14 that device as it was found on the day of the search
15 warrant?

16 A. Yes, they are.

17 Q. And what was the evidence number that was assigned
18 to the external hard drive?

19 A. The external hard drive was assigned 1B7.

20 MS. ROOHANI: Your Honor, I would move to admit
21 Government's Exhibit 6A and 6B.

22 THE COURT: Any objection to 6A and B?

23 MR. MARCHESE: No, Your Honor.

24 THE COURT: They will be admitted.

25 (Government's Exhibits 6A and 6B received.)

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1 BY MS. ROOHANI:

2 Q. And, Special Agent Flaherty, can you please mark on
3 the demonstrative where 6A -- or 1B7 was found.

4 I'm going to have you take a look at
5 Government's Exhibit 6C. Do you recognize this photo?

6 A. Yes, I do.

7 Q. What is it a photo of?

8 A. So, off of the patio door, inside by the kitchen,
9 adjacent to the kitchen, was a bar area. This depicts that
10 bar area.

11 Q. And was there a device depicted in this particular
12 photo?

13 A. There is a device in this photo. It's difficult to
14 see. There was an Apple laptop that was recovered from
15 this area.

16 Q. Could you -- could you explain generally where that
17 might be?

18 A. Yes. So on our evidence recovery log, we document
19 not only what was recovered, what rooms it was recovered,
20 but where within that room it was recovered. And it was
21 recovered from the -- by the sink area on the island.

22 Q. Okay. And is this a fair and accurate depiction of
23 this area of the house on the day of the execution of the
24 search warrant?

25 A. Yes, it is.

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1 Q. Is it also a fair and accurate depiction of where
2 that device was found?

3 A. Yes.

4 Q. And did you tell me what the device number
5 associated with that was?

6 A. It was assigned 1B16.

7 Q. Okay.

8 MS. ROOHANI: Your Honor, I'd move to admit
9 Government's Exhibit 6C.

10 THE COURT: Any objection?

11 MR. MARCHESE: No objection.

12 THE COURT: It will be admitted.

13 (Government's Exhibit 6C received.)

14 MS. ROOHANI: Okay. Your Honor, and I would ask
15 that that be published just so Special Agent Flaherty can
16 circle for the Court where that particular device was
17 found. Maybe. Okay.

18 THE WITNESS: So you're in the center island
19 area --

20 MS. ROOHANI: Aaron, could you show her how to
21 do the circle thing.

22 COURTROOM ADMINISTRATOR: (Inaudible).

23 THE WITNESS: Oh, okay.

24 BY MS. ROOHANI:

25 Q. Go ahead and circle where it was found in that area.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Okay.

2 And, Special Agent Flaherty, can you also mark
3 on the demonstrative what area of the house this is?

4 Thank you, Aaron.

5 Please take a look at Government's Exhibits 7A
6 and 7B.

7 Do you recognize these photos?

8 A. Yes, I do.

9 Q. What are they photos of?

10 A. These are photos of room A18, one of the upstairs
11 office -- Exhibit 7A is as you enter the office from the
12 hallway, and then Exhibit 7B was an Apple laptop computer
13 that was on the floor as you made entry into the office.

14 Q. Are they fair and accurate depictions of the room
15 and the device as they were found the day of the execution
16 of the search warrant?

17 A. Yes, they are.

18 MS. ROOHANI: Your Honor, I'd move to admit
19 Government's Exhibits 7A and 7B.

20 THE COURT: Any objection to 7A and B?

21 MR. MARCHESE: No, Your Honor.

22 THE COURT: They will be admitted.

23 (Government's Exhibits 7A and 7B received.)

24 BY MS. ROOHANI:

25 Q. Special Agent Flaherty, what is -- the device that

—TRANSCRIBED FROM DIGITAL RECORDING—

1 is depicted in 7B, what is the evidence number that was
2 associated with that?

3 A. It was assigned 1B13.

4 Q. Okay. And can you mark on the demonstrative where
5 this is in the house?

6 A. Yes.

7 Q. I bet you didn't think you were going to get a
8 workout today. Sorry about that.

9 Please take a look at Government's Exhibits 8A
10 and 8B.

11 Do you recognize these photos?

12 A. Yes, I do.

13 Q. What are they photos of?

14 A. They're also of room A18, one of the offices
15 upstairs. Exhibit 8A is, as you enter from the hallway,
16 the main part of the office area. And then Exhibit 8B
17 depicts the desk that was to the far left side of the
18 office area.

19 Q. Are there any devices depicted in this particular
20 photo, 8B?

21 A. Yes. Next to -- I'm sorry, it was to the far right
22 side of the office area. 8B there was a Gateway computer
23 that was on the floor by the desk area.

24 Q. And what was the evidence number assigned to that
25 device?

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1 A. That was 1B30.

2 Q. And was there any other devices found in this room?

3 A. Yes. There was an external hard drive that was
4 found on the top of the desk behind the monitor.

5 Q. Okay. And what was the device number associated
6 with that?

7 A. That was 1B21.

8 Q. Are these photos a fair and accurate depiction of
9 both the rooms and the devices as you saw them the day of
10 the execution of the search warrant?

11 A. Yes, they are.

12 MS. ROOHANI: Your Honor, I'd move to admit
13 Government's Exhibits 8A and 8B.

14 THE COURT: Any objection?

15 MR. MARCHESE: No, Your Honor.

16 THE COURT: They'll be admitted.

17 (Government's Exhibits 8A and 8B received.)

18 MS. ROOHANI: I would ask that Government
19 Exhibit 8B be published so Special Agent Flaherty can
20 indicate where the devices are.

21 BY MS. ROOHANI:

22 Q. And same as before, can you mark where 8 -- 1B21 is
23 in that photo.

24 And so what color is that device?

25 A. It was a white external hard drive.

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1 Q. Okay. And then where is 1B30?

2 Okay. And I would ask that you mark on the
3 demonstrative where those two devices are found.

4 And so just to be clear, 1B13, 1B21, and 1B30
5 were all found in the same room?

6 A. Yes, they were.

7 Q. Take a look at Government's Exhibit 9A, 9B, and 9C.

8 Do you recognize these photos?

9 A. Yes, I do.

10 Q. What are they photos of?

11 A. These photos were taken inside the larger closet
12 identified as room A26 off the master bedroom.

13 Q. And is there any devices depicted in these photos?

14 A. Yes. In Exhibit 9C, on top of the counter or
15 dresser that was inside the closet, there was a large gold
16 box. This depicts the gold box.

17 Inside the gold box is a blue and white USB
18 drive.

19 Q. And what evidence number was assigned to that USB
20 drive?

21 A. It was assigned 1B37.

22 Q. Is this a fair and accurate depiction of both that
23 large closet as well as the device as it appeared on the
24 day of the execution of the search warrant?

25 A. Yes, it is.

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1 MS. ROOHANI: Your Honor, I would move to admit
2 Government's Exhibits 9A, 9B, and 9C.

3 THE COURT: Any objection?

4 MR. MARCHESE: No, Your Honor.

5 THE COURT: All right. Thank you. It will be
6 admitted.

7 (Government's Exhibits 9A, 9B, 9C received.)

8 MS. ROOHANI: And I would ask that we publish
9 9C, just so Special Agent Flaherty can identify the device.

10 Can you circle -- wait. When it comes up. Can
11 you circle for us the device, please.

12 And I would ask that you mark on the
13 demonstrative where 1B37 was found.

14 A moment's indulgence, Your Honor.

15 Your Honor, I don't have any more questions for
16 Special Agent Flaherty at this time, and I would pass the
17 witness.

18 THE COURT: Thank you.

19 Cross, Mr. Marchese?

20 MR. MARCHESE: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MARCHESE:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. So turning your attention to the date of the search,

—TRANSCRIBED FROM DIGITAL RECORDING—

1 it was your testimony on direct examination that you were
2 the search team leader; is that fair to say?

3 A. Yes, that's correct.

4 Q. Okay. So as the search team leader, would it be
5 fair to say that you're kind of quarterbacking the whole
6 thing, making sure that all the policies and procedures of
7 the FBI are followed?

8 A. Yes.

9 Q. Okay.

10 A. To most part, yes.

11 Q. I believe that the term that you used were the
12 protocols; correct?

13 A. Yes, that's correct.

14 Q. But you're not the one actually taking these
15 pictures, you're just simply going around and making sure
16 that all the items of evidentiary value are photographed
17 and things of that nature; is that fair to say?

18 A. It would be more fair to say that upon entry I was
19 with the photographer as the initial photos were made.

20 After the search was initiated, the
21 photographs -- the people searching would call the
22 photographer to take additional photographs. That would
23 have been covered in a search brief, where law enforcement
24 personnel were told about search procedures.

25 Q. Okay. So, numerically, what number are you on to

—TRANSCRIBED FROM DIGITAL RECORDING—

1 the premises? First? Last? Middle?

2 A. On this particular search, we were not -- I did not
3 enter the residence until it was secured. Then I would
4 have been with the photographer and our photo log person.
5 So the three of us would have made entry together.

6 Q. Okay. So initially there is a team that goes on to
7 the premises, secures it, and then gives you the okay to go
8 ahead with the CSI or photographers to come in; is that
9 fair to say?

10 A. On this particular search, yes, that's correct.

11 Q. Okay. Because they're all different; correct?

12 A. Yes. Very much so.

13 Q. This is a very large property; is that fair to say?

14 A. Yes.

15 Q. It's over an acre?

16 A. Yes.

17 Q. On the front of the house is just a street; correct?

18 A. Yes, that's correct.

19 Q. And then to one side is just a vacant lot; correct?

20 A. Correct.

21 Q. To the back of the house is a parking lot; is the
22 correct?

23 A. To the rear I believe was the orchard, but it was an
24 open space, yes.

25 Q. Okay. We can agree that there's nothing -- there's

—TRANSCRIBED FROM DIGITAL RECORDING—

1 no building behind the rear of the house?

2 A. That's correct.

3 Q. And then there's a residence to the other side;
4 right?

5 A. Yes, to the west side of the residence.

6 Q. Now, as you get on the scene, what is the first
7 thing that you do?

8 A. The first thing would be, I believe -- I would
9 assign an individual to label the rooms, with either
10 letters or numbers or a combination of both.

11 Q. Okay. And one of the things you're going to do is
12 you're going to make sure that the scene is not upset;
13 correct?

14 A. That's correct.

15 Q. Because you want to maintain the integrity of the
16 scene; correct?

17 A. Right. Through the entry photos, we are documenting
18 how the residence was when we entered.

19 Q. Okay. So at that point, everyone is instructed not
20 to move anything so as to preserve the evidentiary -- the
21 evidentiary integrity of the premises?

22 A. That's correct. Yes.

23 Q. Okay. And you're going to do that by, you know,
24 making sure that you don't knock anything over; correct?

25 A. That's correct.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. You probably wear gloves. Is that another thing
2 that might occur?

3 A. Yes, absolutely.

4 Q. Okay. And the reason for that is, obviously, you
5 don't want anyone's prints transferred on to any items of
6 evidentiary value; fair to say?

7 A. Fair to say.

8 Q. Okay. How many people were -- agents, officers,
9 detectives, how many team total were on this particular
10 search?

11 A. I don't have the exact count, but there was in
12 excess of 20.

13 Q. Okay. Now, and I'm sorry, I apologize. I'm getting
14 old here. I forgot what the testimony was.

15 What was -- how long have you been an agent?

16 A. Twenty years.

17 Q. How many searches have you done?

18 A. Hundreds.

19 Q. And of the hundreds -- 20, that's a larger amount
20 than what you typically do on a search; is that fair to
21 say?

22 A. We would -- we would determine the personnel needed,
23 depending on the size of the residence, the size of the
24 property.

25 Q. All right. And it would be fair to say given the

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1 size of the property, you would need more people?

2 A. Yes, that's correct.

3 Q. So in this particular case, you testified that 37
4 items were retrieved in total; correct?

5 A. Yes, that were seized.

6 Q. Okay. And those 37 items, those would be the items
7 that the entire search team would go around the home, look
8 at, and feel that those were of evidentiary value; correct?

9 A. Yes. We would also, as part of the search, digital
10 items, we would try to preview on scene to determine if
11 they were of evidentiary value. So certain items may have
12 been collected, previewed, and returned.

13 Q. Okay. So which items were those?

14 A. There were two cell phones that were returned, I
15 believe some CDs, DVDs that were not seized.

16 Q. Any computers, to your knowledge?

17 A. I do believe that there were two -- no, I'm sorry,
18 not to my knowledge. There were not computers that were
19 not seized.

20 Q. Okay. Now, was there something else, maybe like a
21 tablet or something along those lines, or -- and I'm not
22 trying to put words in your mouth, I just -- you seemed
23 hesitant.

24 A. No. And I'm trying to remember exactly what was
25 seized -- or what was taken, collected, and then returned.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 But really it was two cell phones, and I believe there was
2 a bag of CDs or DVDs mixed.

3 Q. Okay. But computer-wise, it's your testimony that
4 there were no computers that were forensically analyzed on
5 the scene and left on the premises; is that fair and
6 accurate?

7 A. As best I can remember, yes, that's correct.
8 Certain items may not have been able to have been previewed
9 on scene, depending on the operating systems or something
10 to that effect.

11 Q. Okay. And at the end of the search, you prepared a
12 property log; correct?

13 A. Yes, that's correct.

14 Q. And a receipt; correct?

15 A. Yes.

16 Q. So you stayed on the premises for the entire search,
17 and then once it was done, obviously at some point in time,
18 you left?

19 A. Were.

20 Q. Okay. Now, on direct examination you were asked
21 some questions about what was found and where it was found.

22 One of the items that you had mentioned would
23 have been item B5. That was a tablet. Is that -- do you
24 recollect that particular item?

25 A. Not 1B5 directly, no.

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1 Q. Okay. Do you not remember it or --

2 A. I wasn't asked about it on direct.

3 Q. Okay. Now, if you look on the casita, which would
4 be Government's Trial Exhibit 3A -- do you have that in
5 front of you?

6 A. Yes, I do.

7 Q. Okay. And this was entered into evidence. And on
8 that particular exhibit, there's a legend on that. Do you
9 see that?

10 A. Yes, I do.

11 Q. Okay. And that legend has a 1, 2, and a 3. And
12 number 3 is listed as a tablet; is that correct?

13 A. That is correct.

14 Q. Okay. And that particular item, do you remember
15 that being logged into evidence as item 1B5?

16 And if you need to refresh your recollection, I
17 totally understand.

18 A. Yes. If I could, I could tell you exactly what 1B
19 number it was entered into.

20 Q. Yeah. Go ahead.

21 A. Okay. Thank you.

22 Q. And just read it to yourself, and let me know when
23 your memory has been refreshed.

24 A. Yes, 1B5 was an Apple iPod Air.

25 Q. Okay.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. And it was recovered from the kitchen island area.

2 Q. And when you say the kitchen area, we're still
3 referring to the guest house, casita, pool house?

4 A. Yes.

5 Q. Not the main portion of the house?

6 A. No, into the casita area.

7 (Discussion held off the record.)

8 BY MR. MARCHESE:

9 Q. Okay. I'm going to show you what's been previously
10 entered into evidence as Government's Exhibit No. 4.

11 Can you see the name on the screen of that
12 particular item?

13 A. Yeah. The user name is Frank Alfter.

14 Q. You also mentioned on direct examination that there
15 was another item of evidentiary value that was taken out of
16 the pool house, but it was -- I believe it was item 1B2 is
17 a -- some sort of a SIM card or an external card plugged
18 into the laptop, I believe?

19 A. It was an SD card --

20 Q. Okay.

21 A. -- that had been inserted inside, yes.

22 Q. All right. Is there any particular reason that that
23 wasn't -- that was booked into evidence but not pictured?

24 A. At the time that the laptop was removed from the
25 casita, we didn't realize the SD card was inside it. It

—TRANSCRIBED FROM DIGITAL RECORDING—

1 was upon preview that the SD card was discovered.

2 Q. Okay.

3 A. And then it was entered or logged as a separate
4 item.

5 Q. All right. So it was just overlooked?

6 A. Yes.

7 Q. Human error?

8 A. As part of the photographs, yes.

9 COURTROOM ADMINISTRATOR: Mr. Marchese, that
10 last exhibit, what was the number on there?

11 THE COURT: 4?

12 COURTROOM ADMINISTRATOR: 4?

13 MR. MARCHESE: 4, yes.

14 THE COURT: The one in the Frank Alfter name --

15 MR. MARCHESE: 4B as in boy.

16 THE COURT: -- on the computer screen?

17 COURTROOM ADMINISTRATOR: Thank you.

18 BY MR. MARCHESE:

19 Q. But it would be normal protocol to take a picture of
20 all items of evidentiary value; is that fair to say?

21 A. It is our protocol to do so. It -- mistakes can
22 happen, or it could be removed prior to a photograph being
23 taken. But typically we try not to do that.

24 Q. Okay. I'm also going to show you what the
25 government brought into evidence as Trial Exhibit 6A.

TRANSCRIBED FROM DIGITAL RECORDING

1 Okay.

2 Do you recognize this picture?

3 A. Yes, I do.

4 Q. And which picture was this?

5 A. This was the picture of -- from the first floor of
6 the main house, the doorway leading to the back patio area.

7 Q. And as you testified earlier, that's a fair and
8 accurate depiction of how it was when you guys went in and
9 captured it via photograph; correct?

10 A. Yes, that's correct.

11 Q. Okay. I'm going to show you Government's Trial
12 Exhibit 6B. And what is that a picture of? Same thing?

13 A. That is the router and then an external hard drive
14 that was plugged in the back patio.

15 Q. Okay. But that's the same device, correct, just a
16 close-up?

17 A. Yes, it is.

18 Q. Okay. And this one was knocked over or moved over,
19 as opposed to the other one, which was standing straight
20 up; is that fair to say?

21 A. Yes, that's correct.

22 Q. Okay. And is that normal procedure, to move items
23 or knock them over, or whatever happened, before you take a
24 picture of them?

25 A. It wouldn't be normal. In this particular case, it

—TRANSCRIBED FROM DIGITAL RECORDING—

1 could have gotten knocked over in a number of ways.

2 But, more specifically, if we need to see the
3 brand name of an item and it can't be seen standing up, we
4 will turn it sideways. I would speculate that was the
5 reason.

6 Q. Okay. So the idea was that you wanted to see it say
7 Netgear; correct?

8 A. Yes.

9 Q. Okay. But if it was standing up, you could still
10 see it says Netgear; right?

11 A. You -- possibly.

12 Q. Yes.

13 A. The Exhibit 6A depicts how it was as we're doing our
14 entry photos.

15 Q. Right.

16 A. So 6A would depict how it was.

17 Q. Okay. Now, Government's Exhibit 6C -- and I
18 apologize. Ms. Roohani went over this with you already,
19 but I just wanted to go over it again.

20 So it's your testimony that this is where item
21 1B16 was acquired. That would have been a laptop; correct?

22 A. Yes, that's correct.

23 Q. All right. And it's your testimony that it's -- I'm
24 just going to point to it with my pen. Is this where it
25 was found?

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1 A. Yeah. It was just adjacent to the sink that was on
2 the island and the bar.

3 Q. Okay. Can you see it in this picture or --

4 A. It is -- in this particular picture, it's really
5 difficult. If the picture's blown up, you can see a small
6 edge of it.

7 Q. Okay.

8 A. But it's difficult to see in this picture.

9 Q. All right. And since it's difficult to see, there
10 are no other pictures of that particular item; correct?

11 A. That's correct.

12 Q. Okay. And, once again, it would not be normal
13 protocol to not take pictures of items that were seized for
14 evidentiary value; fair to say?

15 A. That's fair to say.

16 Q. Okay. And just bear with me a moment. I'm about to
17 show you a series of pictures that have not come into
18 evidence just yet.

19 MR. MARCHESE: Your Honor, permission to
20 approach with Exhibits 5012, 5013, 5032, 5033, 5037, and
21 5038. And these will be defenses exhibits which have not
22 been entered.

23 THE COURT: Any objection, Ms. Roohani?

24 MS. ROOHANI: No, Your Honor. I believe she's
25 just identifying them at this time. Yeah, that's fine.

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1 THE COURT: Okay.

2 MR. MARCHESE: May I approach, Your Honor?

3 THE COURT: Yes, you may.

4 MR. MARCHESE: Thank you.

5 BY MR. MARCHESE:

6 Q. Just take a look at these series of pictures and see
7 if you recognize them at first, and then we will take
8 them as we go.

9 A. I recognize them all. I would have to refresh my
10 memory as to room A21, what it depicted. But, yes, I
11 recognize the picture.

12 Q. You recognize the picture?

13 A. Yes.

14 Q. All right. And these pictures were all taken on the
15 day of the search, which we've been referring to and you've
16 been testifying to?

17 A. Yes, that's correct.

18 Q. Okay. And they're all fair and accurate depictions
19 of the pictures that were taken on the day of the search of
20 the specific items which are depicted in these pictures?

21 A. Yes, that's correct.

22 Q. Okay.

23 MR. MARCHESE: Your Honor, at this time defense
24 moves to enter 5012, 5013, 5032, 5033, 5037, and 5038 into
25 evidence.

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1 THE COURT: Any objection?

2 MS. ROOHANI: No objection, Your Honor.

3 THE COURT: All right. 5012, 5013, 5032, 5033,
4 5037, and 5038 will be admitted.

5 (Defendant's Exhibits 5012, 5013, 5032, 5033,
6 5037, 5038 received.)

7 MR. MARCHESE: Thank you. And permission to
8 publish 50 --

9 THE COURT: Yes --

10 MR. MARCHESE: -- 38?

11 THE COURT: -- you may.

12 BY MR. MARCHESE:

13 Q. And, Special Agent, do you recognize this particular
14 picture?

15 A. Yes, I do. That is the entryway into the master
16 bedroom.

17 Q. Okay. And does it appear that this bed is not made;
18 correct?

19 A. Yes.

20 Q. Okay.

21 THE COURT: Is this 5012?

22 MS. ROOHANI: This is 38.

23 MR. MARCHESE: 38, Your Honor. I apologize.

24 THE COURT: Okay.

25 MR. MARCHESE: I can go in order, if Your Honor

—TRANSCRIBED FROM DIGITAL RECORDING—

1 would rather, if it makes it easier.

2 THE COURT: No, no, it doesn't matter. I'm just
3 trying to match up the photo with the number I wrote down.
4 But I couldn't see the number on the picture.

5 MR. MARCHESE: I'm so sorry. I just went
6 numerically, and then I skipped. I apologize.

7 THE COURT: That's all right. So master bedroom
8 is 5038. Got it.

9 BY MR. MARCHESE:

10 Q. And I'm going to show you what's been marked as
11 5012.

12 Do you recognize this?

13 A. Yes. This -- this is one of the office areas on the
14 second floor of the main house.

15 Q. Okay. And to your recollection, were there any
16 items seized of evidentiary value out of this room?

17 A. I -- to the best of my knowledge, I don't recall.
18 But I could look and refresh my memory.

19 Q. Okay. No, it's okay.

20 A. Okay.

21 Q. If you don't remember, you don't remember. I don't
22 want to put words in your mouth, like I said.

23 And this is 5013. Yes, 5013.

24 And this picture, what is your recollection
25 regarding this picture?

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1 A. It's identified as room A21. This -- this is one of
2 the -- another office on the second floor of the main
3 house.

4 Q. Okay. And when you say "another office," how many
5 offices were on the second floor of the house?

6 A. We identified three individual office rooms.

7 Q. Okay. So the one that I just showed you the picture
8 of previously, this one, and then there's the other one
9 with the green chair that you took the Gateway PC and the
10 hard drive out of; correct?

11 A. That's correct.

12 Q. Okay. And I'm just going to show you one of them.
13 And this is 5033.

14 Do you recognize this photo?

15 A. Yes.

16 Q. And what is that a photo of?

17 A. It's a photograph of one of the closets that -- as
18 you enter the master bedroom, if you go left and down that
19 hallway, there were two closets. It's one of those
20 closets.

21 Q. I also wanted to go back to Government's Exhibit 8A.
22 And you remember this picture. This was that other office
23 that we were just referring to. I'm sorry. Take your
24 time.

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. And this is of some importance because there
2 were two particular items in which the government just
3 asked you questions about on direct examination. Number
4 one, this black computer tower.

5 And apparently there was a hard drive found
6 behind that monitor; is that correct?

7 A. That's correct.

8 Q. But there's no picture of that hard drive that was
9 found behind the monitor; is that correct?

10 A. Not specifically of the hard drive. It -- on this
11 particular photo if you zoom in, you can see a portion of
12 the external hard drive.

13 Q. Okay. There was not a picture taken specifically of
14 that hard drive; correct?

15 A. That's correct.

16 Q. Okay. And, once again, would you agree with me that
17 that's not protocol to take items that have evidentiary
18 value and not take a picture of them directly? Fair to
19 say?

20 A. Fair to say.

21 MR. MARCHESE: Court's indulgence.

22 (Pause in the proceedings.)

23 BY MR. MARCHESE:

24 Q. Almost done. What time did you arrive at the
25 residence on that particular day?

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1 A. It was approximately 7:00 a.m.

2 Q. Okay. And was that when the search began, or did
3 everyone just start meeting there and then the search begin
4 at a separate time?

5 A. The search began later, after the residence was
6 secured.

7 Q. Okay.

8 A. It would have begun the security aspect around
9 approximately 7:00.

10 Q. Okay. So someone else, obviously not yourself, has
11 been your testimony, goes in around 7:00; and then you come
12 in at what time, if you know?

13 A. It was approximately an hour, hour and a half later.

14 Q. And then when did you leave the premises that day?

15 A. I don't recall exactly what time. It would have
16 been, as best as I can recall, around 1:00 p.m.

17 Q. Was there still other law enforcement officials
18 there when you left?

19 A. They left when I left. But, yes --

20 Q. Okay.

21 A. -- I was one of the last groups to leave.

22 Q. Okay.

23 MR. MARCHESE: Pass the witness, Your Honor.

24

25

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1 REDIRECT EXAMINATION

2 BY MS. ROOHANI:

3 Q. Special Agent Flaherty, I want to start where
4 Mr. Marchese left off. You had mentioned at 7:00 a.m. is
5 when everyone arrived and that the scene was secured.

6 Who secured the scene?

7 A. It was Las Vegas SWAT.

8 Q. And why was SWAT called in this instance?

9 A. For a number of reasons. The size of the property;
10 unknown, as far as weapons; given these violations, there
11 tends to be suicidal risks.

12 Q. And so SWAT cleared the residence, and after SWAT
13 cleared the residence, only after that did you and members
14 of your team enter; is that correct?

15 A. That's correct.

16 Q. Okay. Mr. Marchese asked you some questions about
17 some photos not being taken of devices directly.

18 Do you remember those questions?

19 A. Yes, I do.

20 Q. Do you also remember your testimony on direct where
21 you talked about how you were one of the first people in
22 the house?

23 A. Yes, that's correct.

24 Q. And you also testified on direct that there were
25 fair and accurate -- the evidence list that was made that

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1 day and the evidence logs that were made that day were fair
2 and accurate and they were correct, is that -- do you
3 remember that?

4 A. Yes, that's correct.

5 Q. Is it your testimony that all of the evidence, even
6 if it wasn't specifically taken, had a photo of it, that it
7 was properly logged and inventoried?

8 A. Yes, it was.

9 Q. Mr. Marchese asked you about Defense Exhibit 5012.
10 If you could flip to that, please.

11 A. Is there a --

12 Q. I think it's tab 12.

13 A. Thank you.

14 Q. It's a photo of an office.

15 Do you remember that?

16 A. Yes.

17 Q. And you also testified on cross that you didn't
18 remember what devices, if any, were collected from that
19 room.

20 Do you remember that?

21 A. Yes, I do.

22 Q. And you mentioned that it would refresh your
23 recollection if you could look at the evidence log.

24 Do you remember that too?

25 A. Yes.

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1 Q. I would ask that you look at the evidence log and
2 tell me what devices, if any, were collected from that
3 room.

4 A. Yes, there were items taken from that room.

5 Q. Can you tell me the evidence numbers associated with
6 those devices, please?

7 A. Yes. Evidence item 1B17 was a Passport external
8 hard drive that was on the desk.

9 Evidence item 1B25 was an Iomega hard drive that
10 was in the -- inside a box that was on a niche on the wall.

11 And that's it.

12 Q. Okay. Take a look at Defense Exhibit 5013 that
13 Mr. Marchese went over with you. It's in the room labeled
14 A21.

15 A. Yes.

16 Q. Were there devices collected from that room?

17 A. There were. I don't recall what evidence item they
18 were.

19 Q. Would reviewing your notes refresh your recollection
20 on those?

21 A. Yes, it would.

22 Q. Please do that.

23 A. Evidence item 1B14 was an Apple MacBook laptop
24 recovered on a brown desk.

25 Evidence item identified as 1B31 was an Apple

TRANSCRIBED FROM DIGITAL RECORDING

1 All-in-One computer that was on a black desk.

2 Evidence item 1B34 was an Apple iPhone that was
3 on a docking station.

4 And that is it.

5 Q. And it would be fair to say that of the 37 devices
6 collected, we've only reviewed a few of them?

7 A. That's correct.

8 Q. Okay. Go ahead and take a look at Government's
9 Exhibit 4A.

10 A. Do you have a tab number?

11 Q. I'm sorry?

12 A. A tab number?

13 Q. Oh, it's tab 4 in the government's folder.

14 A. Sorry. My apologies.

15 Q. And you testified on direct and on cross that this
16 is item 1B1 and 1B2.

17 Do you remember that?

18 A. Yes, I do.

19 Q. Is it policy to take apart every device on scene to
20 see what other things might be inserted into that device?

21 A. No, it would not be.

22 Q. And why is that not the policy?

23 A. In this particular case, it -- because it was
24 previewed on scene was when the SD card was located. There
25 would be -- there have been occasions where a laptop might

—TRANSCRIBED FROM DIGITAL RECORDING—

1 have an SD card aside of it, and it wouldn't be found until
2 it was forensically examined.

3 Q. Okay.

4 MS. ROOHANI: A moment's indulgence, Your Honor.

5 THE COURT: Sure.

6 MS. ROOHANI: Your Honor, I would pass the
7 witness if defense is inclined to ask Special Agent
8 Flaherty any more questions.

9 THE COURT: Any further cross?

10 MR. MARCHESE: No, Your Honor.

11 THE COURT: All right. Thank you very much,
12 special agent. You can go ahead and step down. If you
13 brought any reports with you, go ahead and take them, but
14 leave the exhibits there --

15 THE WITNESS: Yes, ma'am, thank you.

16 THE COURT: Thank you.

17 MS. ROOHANI: And, Your Honor, we would ask that
18 she be released and she not subject to recall.

19 THE COURT: Any objection?

20 MR. MARCHESE: No, Your Honor.

21 THE COURT: All right. You are released. Thank
22 you very much for coming.

23 (The witness was excused.)

24 THE COURT: All right. Ms. Roohani, do you want
25 to take a quick 10-minute restroom break before we call the

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1 next witness?

2 MS. ROOHANI: That would be lovely, Your Honor.

3 THE COURT: It's 2:46. Let's try to be back
4 here before 3:00 p.m., certainly.

5 COURTROOM ADMINISTRATOR: All rise.

6 (Recess from 2:46 p.m. until 2:56 p.m.)

7 COURTROOM ADMINISTRATOR: All rise.

8 THE COURT: Thank you. Ms. Roohani, do you want
9 to call your next witness.

10 MS. ROOHANI: Yes, Your Honor. The United
11 States calls Albert Giangregorio.

12 COURTROOM ADMINISTRATOR: Please raise your
13 right hand.

14 You do solemnly swear that the testimony you
15 shall give in the cause now before the Court shall be the
16 truth, the whole truth, and nothing but the truth, so help
17 you God?

18 THE WITNESS: Yes, I do.

19 COURTROOM ADMINISTRATOR: Thank you, sir. You
20 may be seated.

21 THE WITNESS: Thank you.

22 COURTROOM ADMINISTRATOR: Please state and spell
23 your full name for the record.

24 THE WITNESS: Yes. My name is Albert
25 Giangregorio, and that's spelled G-i-a-n-g-r-e-g-o-r-i-o.

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ALBERT GIANGREGORIO

called as a witness on behalf of the
Government, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ROOHANI:

Q. Agent Gregorio -- Agent Giangregorio, I abbreviated
your last name, I apologize -- who is your employer?

A. I work for the Department of Homeland Security,
Homeland Security Investigations.

Q. And how long have you worked for the Department of
Homeland Security?

A. I have been employed with HSI since July of 2010.

Q. And before that, who did you work for?

A. I worked for the United States Air Force Office of
Special Investigations since 2004.

Q. Okay. What are your current duties and
responsibilities as part of your duty?

A. I am currently a program manager for the illicit
financial proceeds unit in Washington, DC.

Q. At any point have you been involved in child
exploitation cases?

A. Yes, I have. I was a group supervisor for the child
exploitation investigative group here in Las Vegas from
2014 through September 16th of this year.

Q. So up until very recently you were working on child

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1 exploitation cases?

2 A. Yes, ma'am.

3 Q. Okay. Were you involved in the investigation of the
4 defendant, Jan Fuechtener?

5 A. Yes, I was.

6 Q. And as part of your investigation, did you receive
7 official Department of Homeland Security travel records for
8 both Mr. Fuechtener and Frank Dietmar Alfter?

9 A. Yes, I did.

10 Q. Okay. Go ahead and take a look at Government's
11 Exhibit 29. It's in that big binder in front of you under
12 tab 29.

13 A. Okay.

14 Q. Go ahead and look through all the pieces of paper
15 under tab 29. I believe there's a total of eight pages.

16 Do you recognize those documents?

17 A. Yes, I do.

18 Q. How do you recognize them?

19 A. I requested the crossing history for Mr. Alfter and
20 requested these records be certified.

21 Q. Okay. And what are these records? Are these
22 crossing records?

23 A. Excuse me?

24 Q. What are these records?

25 A. These records are border crossing records in our

—TRANSCRIBED FROM DIGITAL RECORDING—

1 system called the Treasury Enforcement Telecommunications
2 System, which tracks all foreign and domestic travel inside
3 and out of the United States.

4 So these are just records indicating when
5 someone crossed.

6 Q. And you indicated that you asked for these records
7 to be certified. Is that indicated anywhere in this
8 document?

9 A. Yes, it should be on that first page with the
10 certification from the customs and border protection
11 official.

12 MS. ROOHANI: Okay. Your Honor, I would move to
13 admit these documents under the Court's pretrial order.

14 THE COURT: Can you tell me again which exhibits
15 are we referring to?

16 MS. ROOHANI: This is just Exhibit No. 29.

17 THE COURT: 29. Any objection?

18 MR. SANFT: No objection, Your Honor.

19 THE COURT: All right. 29 will be admitted.

20 (Government's Exhibit 29 received.)

21 BY MS. ROOHANI:

22 Q. After you requested these records, did you provide
23 these documents to the case agent in this case, Mari
24 Panovich?

25 A. Yes, I did.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. You mentioned those are crossing records, and
2 you mentioned that they came from a particular program.

3 Can you tell me how these documents are
4 maintained?

5 A. How they're maintained? They're maintained in the
6 Treasury Enforcement Telecommunications System, which is
7 accessed by HSI agents and most other agencies. So but
8 primarily Homeland Security agents.

9 Q. And what all does it log or record?

10 A. It logs any information related to the entry of an
11 individual into the United States. So name, date of birth,
12 any identifying information, passport numbers, time and
13 date of crossing.

14 It will also include, like, inspector
15 information, whichever inspector processed you into the
16 United States, any secondary examination results, anything
17 along those lines.

18 Q. Okay. And how do you typically access these
19 records?

20 A. Through -- access through a specific program on my
21 desktop computer that's proprietary to the Department of
22 Homeland Security.

23 Q. And does that have a user name and a password for
24 you, specifically?

25 A. Yes, it does.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Does passport information about the traveller get
2 logged in the system?

3 A. Yes. So every passport has a scannable piece of
4 information. So that gets scanned by the inspector, and
5 all the information is downloaded into the Treasury
6 Enforcement Telecommunications System.

7 Q. And does it also include the arriving and departing
8 port and any airline inflammation -- information that might
9 be there?

10 A. Correct. Yes, it does.

11 Q. And what type of inform -- when you seek these
12 documents, what information are you typically looking for?

13 A. I'm generally looking for time and date of travel,
14 when they came in, where they came from, any information
15 the inspector might have placed in there. Also, I am
16 looking for any subject records, anything associated along
17 those lines.

18 I think, generally, that's about it.

19 Q. And would these records confirm a person's presence
20 in the United States at any particular time?

21 A. Absolutely.

22 Q. Okay. Does the record change if the person is
23 entering by land, perhaps on an airplane, as opposed to a
24 cruise or by sea?

25 A. No, all crossings, all recorded crossings into the

—TRANSCRIBED FROM DIGITAL RECORDING—

1 United States are documented.

2 So land border, it would just be -- obviously
3 you wouldn't have any flight information or ship
4 information. But it would document what border crossing
5 you came in, if you came in to San Ysidro, San Diego,
6 whatever it might be.

7 Same thing with a vehicle. If you entered
8 through the border on a vehicle, it would capture the
9 vehicle information. But it's all reported the same.

10 Q. Okay. And you testified that you would know when a
11 person is in the United States.

12 Would you also know when a person is not in the
13 United States from these records?

14 A. Yes.

15 Q. Okay. At some point during your investigation, did
16 you make contact with Frank Alfter?

17 A. Yes, I did.

18 Q. When was that?

19 A. January 31st of 2016.

20 Q. Where did you make contact with him?

21 A. At McCarran International in Las Vegas, Nevada.

22 Q. And was he travelling -- going to travel, or was he
23 returning from travel?

24 A. He was returning from London, I believe, a British
25 Airways flight from London.

TRANSCRIBED FROM DIGITAL RECORDING

1 Q. But he was returning back to the United States from
2 wherever he was?

3 A. Correct. Coming inbound into the United States.

4 Q. And was that international travel?

5 A. Yes, that's correct.

6 Q. Who was he travelling with?

7 A. He was travelling with Kevin Klepping.

8 Q. Okay. Did you speak with Mr. Alfter and
9 Mr. Klepping at McCarran Airport that day?

10 A. Yes, I did.

11 Q. Did you ask them if they would allow you to examine
12 any electronic devices that they would have with them?

13 A. Yes, I did.

14 Q. And did they consent to that?

15 A. Yes, they consented to search of the devices.

16 Q. What were the devices that you looked at?

17 A. The devices were -- there were two Apple iPhones, I
18 don't know exactly which version, and then there was also
19 an Apple Air -- a MacBook Air.

20 Q. Okay.

21 A. One of the brand-new ones.

22 Q. And each of the cell phones belonged to each of the
23 individuals?

24 A. Correct. One to Mr. Alfter and one to Mr. Klepping.

25 Q. And who --

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. I'm sorry. The MacBook Air belonged to Mr. Alfter.

2 Q. Okay. And did you search these devices?

3 A. Yes, I did.

4 Q. And when you searched the devices, did you find --
5 were you searching for evidence of child exploitation or
6 child pornography?

7 A. Yes, specifically for that.

8 Q. When you searched Mr. Alfter's devices, were there
9 any images of child pornography?

10 A. Nothing.

11 Q. Was there any indication whatsoever of anything
12 dealing with child exploitation?

13 A. Absolutely not.

14 Q. When you searched Mr. Klepping's devices, were there
15 any images of child pornography?

16 A. No, there were not.

17 Q. Was there anything indicative of child exploitation
18 on his phone?

19 A. Nothing suggestive of it.

20 Q. Did you return the devices to Mr. Alfter and
21 Mr. Klepping after you had searched them?

22 A. Yes.

23 Q. Okay. I'm going to ask you to take a look at those
24 crossing records.

25 And can you tell me, was Mr. Alfter in the

TRANSCRIBED FROM DIGITAL RECORDING

1 United States on May 9th, 2015?

2 A. Yes, according to these records, he would have been
3 in the United States.

4 Q. Can you tell me where you see that?

5 A. Yes. So about halfway down the page, and there's no
6 page number, page number 1 of the text records, it shows
7 that Mr. Alfter crossed into the United States from
8 Frankfurt International Airport on May 7th, 2015, into the
9 Las Vegas International -- McCarran International Airport,
10 and then departed the United States on -- about eight days
11 later, on May 15th, 2015, from Las Vegas back to Frankfurt
12 International Airport.

13 Q. And if you look at the bottom right-hand of the
14 page, that's 29-007?

15 A. Yes.

16 Q. Okay. So the entry is three-quarters of the way
17 down, 5/7/15; is that fair?

18 A. Yes.

19 Q. And then he arrived -- how do you know that that's
20 an arrival on 5/7/15?

21 A. So -- no, I may have read it wrong. I'm not
22 normally seeing it from a printed -- yes. Okay.

23 So on 5/7/15, there's an "O" under direction, if
24 you see the column that reads "Direction." "O" stands for
25 outbound.

TRANSCRIBED FROM DIGITAL RECORDING

1 So he was outbound for Frankfurt International
2 Airport on 5/7/15 to Las Vegas International or Las Vegas
3 McCarran International. And so that "O" designates the
4 direction of travel.

5 And then on 5/15, you'll indicate -- you'll see
6 an "I" is indicated under the "Direction" column. "I"
7 represents inbound. And so he was inbound from Las Vegas
8 into Frankfurt International.

9 Departing -- wait a minute. Am I reversing it?

10 Q. I'm asking you.

11 A. Yeah.

12 Q. So you tell me.

13 A. No, I'm just -- I'm not used to this format. I
14 apologize.

15 Q. Okay.

16 A. Arriving location. Yes, I've reversed it, I think.
17 So I apologize. It's a little different than how our
18 system prints it out.

19 Q. Okay.

20 A. So --

21 Q. And the reason that it's different is because this
22 is a certified copy --

23 A. Correct.

24 Q. -- and so the way that you typically read it is
25 different?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes, correct.

2 Q. So I just want to be clear --

3 A. Yes.

4 Q. -- on 5 -- I'm asking about May 9th, 2015.

5 A. Yes.

6 Q. On 5/7/15 it says, "Frankfurt International
7 Outbound."

8 Does that indicate that he went from Las Vegas
9 to Frankfurt or Frankfurt to Las Vegas?

10 A. So he -- on 5/7, he went outbound to Frankfurt.

11 Q. Okay.

12 A. And from Las Vegas International.

13 Q. Okay.

14 A. And then flew back in to the country on 5/15 --
15 excuse me -- yeah, 5/15/15. So my apologies again.

16 Q. So on May 9th he was not in the United States?

17 A. Correct. Correct.

18 Q. All right.

19 MS. ROOHANI: I have nothing further for
20 Mr. Giangregorio.

21 And I'll pass him at this time, Your Honor.

22 THE COURT: Any cross?

23 MR. SANFT: Yes, Your Honor.

24

25

TRANSCRIBED FROM DIGITAL RECORDING

1 CROSS-EXAMINATION

2 BY MR. SANFT:

3 Q. Is it agent?

4 A. Yes, special agent.

5 Q. And it's Agent Giangregorio?

6 A. Yes, sir.

7 Q. All right. Agent, your testimony here today is
8 based upon a search that you conducted of Mr. Alfter and
9 Mr. Klepping, and it looks like this was done in October --
10 January 31st? Is that right?

11 A. Of 2016, yes, sir.

12 Q. Okay. Now, I have a document here, it looks like
13 it's labeled "Department of Homeland Security."

14 Did you author this particular document in
15 furtherance of your investigation?

16 A. I don't see the documents on --

17 Q. Let me just -- let me cut to the chase here.

18 How many documents or how many reports did you
19 author in furtherance of this particular incident?

20 A. Did I personally author?

21 Q. Yes.

22 A. I believe one.

23 Q. Okay. And with regards to the document that you
24 authored, did anyone else author any other documents
25 besides the one that you authored?

TRANSCRIBED FROM DIGITAL RECORDING

1 A. Yes.

2 Q. Would it have been the other -- looks like a
3 computer expert or somebody that was present, Mr. Horvath?

4 A. Yes. He did -- I don't believe he authored a report
5 though.

6 Q. Okay. And with regards to his participation in this
7 is that he helped you in reviewing the electronic devices
8 that you have found?

9 A. Correct. Yes.

10 Q. Okay. Now, just taking us back on that particular
11 day on January 31st, 2016, you had already been notified by
12 authorities here in Las Vegas that Mr. Frank Alfter and
13 anybody that he was with was people of interest to this
14 investigation; is that correct?

15 A. Yes. So I also had received notification, so my own
16 records and -- received notification, and then CVP also
17 contacted me. So yes.

18 Q. Okay. And in addition to that, you were aware of a
19 search that had been executed on Mr. Alfter's home 10 days
20 prior to your meeting with Mr. Alfter?

21 A. Yes, I was aware.

22 Q. All right. Were you also aware -- at this
23 particular point I'm assuming you were, that he was here
24 under a visa, and he was a native of Germany?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Okay. Were you also aware that Mr. Klepping was
2 also a native of Germany and was also here on a -- was it
3 E2 visa? Is that what visas they were here under?

4 A. I believe Mr. Alfter was under the E2 visa. I
5 learned that that day as he entered.

6 And I'm not exactly sure what Mr. Klepping came
7 in. He was probably a B1, B2, which is a visitor visa.
8 But I'm not exactly sure of his status, what he came in on,
9 what visa.

10 Q. Okay. And so as the government had asked you
11 earlier, you were aware of when they were actually going to
12 come into the United States or why?

13 A. Correct. Prior to their arrival.

14 Q. All right. So you were able to at least make some
15 preparations for their arrival to interview them?

16 A. Yes.

17 Q. Let me ask you this question. Do you speak German?

18 A. I do not.

19 Q. Did anyone in your party have an opportunity to at
20 least help with potentially interpreting the German
21 language, either to you or to Mr. Klepping or to
22 Mr. Alfter?

23 A. No.

24 Q. Now, one of the things that occurs is that you have
25 an opportunity to review the devices, and you had an

TRANSCRIBED FROM DIGITAL RECORDING

1 opportunity to review them for potential child porn; is
2 that correct?

3 A. Yes.

4 Q. All right. Now, turning, for instance, to the
5 MacBook. Do you handle at all the Macintosh operating
6 system or the Apple operating system?

7 A. Yes.

8 Q. You know what that is?

9 A. Yes.

10 Q. Do you know what that is?

11 A. Yes. Yes.

12 Q. Okay. Do you know what the difference is between
13 the MacBook Air and the MacBook?

14 A. Generally, yes. But I'm not a forensics agent, so I
15 couldn't give you the nuts and bolts of the differences,
16 so --

17 Q. Okay. Now, with regards to the item that you had
18 seized that was Mr. Alfter's, it was basically a laptop
19 computer running the Apple operating system or the
20 Macintosh operating system?

21 A. Correct.

22 Q. All right. And your testimony is that you had an
23 opportunity to review that MacBook, and you said that --
24 and I want to make sure we're clear, you could not find or
25 there was absolutely not any type of child -- evidence of

—TRANSCRIBED FROM DIGITAL RECORDING—

1 any type of child pornography on that computer?

2 A. Uh-huh.

3 Q. Is that a yes?

4 A. Yes, that's what I said.

5 Q. Your review of this particular MacBook, was it just
6 basically typing into the MacBook, like, say, the extension
7 JPG to see if there were any photographs and then review
8 the photographs to determine whether there were child
9 pornography on the MacBook?

10 A. Yes. So we connected a live preview with my
11 forensics agent, Jacob Horvath, and we just basically did a
12 review of the computer, just to identify any files, video
13 images, anything along those lines indicative of child
14 pornography.

15 Q. Okay. Did you ever have an opportunity to review
16 any of the stored chats on the MacBook?

17 A. No, I did not.

18 Q. And did you have an opportunity to at least identify
19 which programs or applications were on that particular
20 MacBook?

21 A. We looked through the MacBook. I remember looking
22 through the applications that were on it, but I don't
23 remember exactly which ones they were.

24 Q. Do you recall if there was a Dropbox application on
25 the MacBook?

—TRANSCRIBED FROM DIGITAL RECORDING—

1 A. I do not.

2 Q. Did you ever at any point look for a Dropbox
3 application on the MacBook?

4 A. Not specifically, no.

5 Q. Now, I'm assuming that because of the fact that you
6 were looking for child pornography, you also looked at the
7 search history or at least the browsing history --

8 A. Correct.

9 Q. -- of the MacBook?

10 A. Yes.

11 Q. And your testimony was that you did not identify
12 anything that you considered to be a child pornography
13 website?

14 A. Correct.

15 Q. What kind of child pornography websites were you
16 looking for? Or what, based upon your experience, would
17 indicate to you a child pornography website?

18 A. I mean, any site that's indicative of child
19 pornography, any type of pornography site, something along
20 those lines. We're just looking through a general cursory
21 review to see if we see anything, any specific website,
22 maybe long and drawn out type of website, user name and
23 password, any type of sites.

24 I don't have any specific one, you know, LS
25 models, or anything like that, we were looking for. We

—TRANSCRIBED FROM DIGITAL RECORDING—

1 were just looking in general.

2 Q. Did you ever at any point in your view of this
3 history on the MacBook indicate or at all see if the
4 MacBook had accessed through a web portal GigaTribe?

5 A. I did not, no.

6 Q. How about the issue of the use of the German
7 language? Your report indicates that you observed that the
8 MacBook had a lot of German language on there.

9 A. Yes.

10 Q. Do you know what the words are in German for child
11 pornography or child exploitation or anything along those
12 lines?

13 A. No. But generally the files are -- regardless of
14 language, we've done multiple investigations where there's,
15 you know, child pornography in different language, whether
16 it be Italian, German, French. We've seen it all. The
17 files remain the same.

18 So there's certain file indicators that we look
19 for. And with the assistance of my forensics agent, we
20 were looking for those type files. So -- and that's all we
21 were looking for.

22 This was not a forensics -- in-depth forensics
23 examination. This was a live preview. We didn't have any
24 detailed forensics. We didn't image the computer or
25 anything along those lines. We were just looking for files

—TRANSCRIBED FROM DIGITAL RECORDING—

1 and images indicative of child pornography. And generally
2 those are in the file names, so -- regardless of the
3 language.

4 Q. Okay. So you chose not to make or obtain any type
5 of forensic image or copy?

6 A. Correct, yes.

7 Q. What was the reason for that?

8 A. Again, it was just a live preview. It was a border
9 search. It was on consent. We just wanted to make sure
10 that there were no images, and we were -- just decided to
11 return.

12 There were no obvious images. Now, whether they
13 were hidden, something along those lines, could have been
14 possible. But, you know, we didn't see anything.

15 In the general area where 90 percent of our, you
16 know, investigations we generally find child pornography,
17 we didn't see any indication of child pornography files.

18 Q. So would it be fair to say you characterized your
19 particular review of the MacBook as it more like a pat and
20 frisk versus an actual digging into pockets to pull out
21 what was inside the pockets; right?

22 A. We did look in all the traditional places, the
23 files, you know, that would be seen from a hard-drive
24 perspective.

25 So it was more than a cursory search, just a

—TRANSCRIBED FROM DIGITAL RECORDING—

1 light, you know, touching or frisk. But it wasn't a
2 full-on forensics image, where we were breaking down every
3 single file.

4 Q. Okay. In addition to that, did you ever have an
5 opportunity to review on the MacBook, for instance, any
6 type of application with regards to, say, Grindr or
7 anything like that?

8 A. I don't -- from that specific examination?

9 Q. Yes.

10 A. I don't recall.

11 Q. And just to be fair, of course, would it -- I just
12 want to make sure we're clear. You weren't given specific
13 details as to things that you may be looking for that was
14 of interest; right?

15 A. Correct.

16 Q. You just did a cursory -- or a general search?

17 A. Correct. Yeah.

18 Q. Now, you had testified, as well, that you had
19 reviewed phones?

20 A. Yes.

21 Q. Those two phones were iPhones?

22 A. Yes.

23 Q. Apple phones?

24 A. Yes.

25 Q. And I'm assuming that they were locked? Or were

—TRANSCRIBED FROM DIGITAL RECORDING—

1 they not locked?

2 A. I don't recall specifically. But if they were
3 locked, we would have asked the individual, as part of the
4 consent, to provide the password.

5 Q. Did you have an opportunity to at least document or
6 capture the apps that were on each phone?

7 A. We reviewed them. I do remember some basic, you
8 know, applications that we generally see on iPhones. But I
9 don't have a specific list, so --

10 Q. Okay. And, once again, you were just looking
11 specific -- just generally at photographs and video that
12 was on those phones?

13 A. Correct. We were looking for files or evidence of
14 child pornography, not for chats or anything along those
15 lines.

16 Q. Okay.

17 A. Unless they were images embedded in those chats.
18 So --

19 Q. All right. In addition to that, you had said that
20 you had filed these items. Did they just give them to you
21 voluntarily, or did you find them within their luggage?

22 A. I don't recall specifically, but -- because CVP
23 initiated the secondary inspection. So the phones were
24 probably out by the time I got there.

25 As part of an examination they were requested to

—TRANSCRIBED FROM DIGITAL RECORDING—

1 present all of their belongings, including baggage, phones,
2 electronic devices.

3 So I'm sure they were asked, as coming into the
4 United States those are all subject to search.

5 So at that point they were on the belt. I asked
6 them if we could do a consent search, and they both agreed.

7 Q. But just to make sure we're clear, agent, you never
8 searched the baggage that's -- the suitcases that were
9 there?

10 A. I did not personally search the baggage. I
11 assisted. I was in the area. But I didn't physically go
12 through the luggage myself.

13 Q. Did anybody -- did you observe anyone physically
14 going through Mr. Alfter's luggage or Mr. Klepping's
15 luggage before --

16 A. Yes. Yes, I did.

17 Q. Okay. And when I say that, how does that look like?
18 I mean, is that in a room? How does that work?

19 A. So at the -- what do they call it, the federal
20 inspection area of McCarran International Airport, you have
21 a line of primary booths. When you first come into the
22 country, you see the immigration agent sitting in the
23 booth. So you go, you present your document. You go
24 through that particular line. That's immigration.

25 There is a secondary inspection area with large

—TRANSCRIBED FROM DIGITAL RECORDING—

1 belts that are belt -- maybe four or five belts across the
2 room that are specifically U-shaped.

3 So the inspector's in the middle of the belt,
4 there's a belt on his left and his right, or her could be,
5 as well, and so that area they put the bag, the belt moves
6 up to a level where the inspector can inspect it. And
7 that's where they were at that point.

8 Q. Do you know who it was, the inspector that actually
9 inspected the luggage?

10 A. I do not recall the specific inspector, no.

11 Q. Did you capture that in your report in -- anywhere?

12 A. No. But I believe -- yeah, they're not here. There
13 are -- there is an inspection record --

14 Q. Let me just cut to the chase. You don't have to
15 find it if you don't --

16 A. Okay.

17 Q. -- can't find it now.

18 The person that does that inspection, is he told
19 what to look for specifically in the luggage?

20 A. He's looking for contraband.

21 Q. And when you say "contraband," it would be typically
22 things that would stick out to you, like, for instance,
23 large sums of cash, cocaine, that kind of thing?

24 A. Anything contrary or prohibited by US law.

25 Q. Okay. Correct. And would it be fair to say that if

—TRANSCRIBED FROM DIGITAL RECORDING—

1 someone has a hard drive in his luggage going through that
2 particular search, they would not identify it necessarily
3 as contraband; correct?

4 A. Not necessarily. But that's not to say if there's
5 prior history that that wouldn't -- you know, for an
6 individual who maybe has been subject of a search warrant,
7 or something along those lines, for a specific crime, then
8 that may become more of an applicable place to hide illegal
9 activity, so --

10 Q. Do you have any documentation, either here or with
11 the government, or anywhere else, that would indicate that
12 anyone that searched Mr. Alfter's luggage or Mr. Klepping's
13 luggage was told to look specifically for hard drives or
14 electronic items inside that luggage?

15 A. No.

16 MR. SANFT: No further questions, Your Honor.

17 THE COURT: Redirect, Mr. Roohani?

18 MS. ROOHANI: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. ROOHANI:

21 Q. Special agent, when you spoke with Mr. Alfter and
22 Mr. Klepping, did they speak English?

23 A. Yes.

24 Q. Did they speak English fluently?

25 A. Yes.

—TRANSCRIBED FROM DIGITAL RECORDING—

1 Q. Did they understand what you were saying?

2 A. Yes.

3 Q. Did you understand what they were saying?

4 A. Yes.

5 Q. Okay.

6 A. And more than likely, I don't remember specifically,
7 but whenever I deal with somebody who speaks a foreign
8 language, I generally ask if they need any language
9 requests.

10 Q. And did you ask that in this case?

11 A. I most likely. Every -- I've been a customs
12 inspector prior to my experience, so it's something I
13 always ask. So I'm sure I did.

14 MR. SANFT: Objection, Your Honor. That's
15 speculation.

16 THE COURT: Sustained.

17 BY MS. ROOHANI:

18 Q. How many child pornography and child exploitations
19 have you yourself worked on?

20 A. Oh, boy.

21 Q. Ballpark?

22 A. Maybe 30.

23 Q. Okay.

24 A. 30 investigations.

25 Q. You're familiar with search terms that people use

TRANSCRIBED FROM DIGITAL RECORDING

1 looking for child pornography?

2 A. Yes.

3 Q. You're familiar with file names and parts of file
4 names that would be indicative of child pornography?

5 A. Correct.

6 Q. Did you look for those search terms on those
7 computers?

8 A. Yes.

9 Q. Did you find any?

10 A. No.

11 Q. Not a single one?

12 A. No.

13 Q. If you had found even a single search term that
14 looked like it could be child pornography, would you have
15 retained that computer or imaged it?

16 A. Yes.

17 MS. ROOHANI: One moment, Your Honor.

18 (Pause in the proceedings.)

19 MS. ROOHANI: Your Honor, I have nothing further
20 for Agent Giangregorio.

21 THE COURT: All right. Redirect? Or, I'm
22 sorry, recross?

23 MR. SANFT: Just one question based upon --

24 THE COURT: Sure.

25 MR. SANFT: -- the government's question.

-TRANSCRIBED FROM DIGITAL RECORDING

1	RECROSS-EXAMINATION
---	---------------------

2 BY MR. SANFT:

3 Q. Agent, do you have a list of those search terms that
4 you look for inside the -- either the phones or the
5 MacBook?

6	A. Do I have a list where?
---	----------------------------

7 Q. Well, I'm -- I just want to know if you have a list
8 of the terminology of terms that you look for when you're
9 looking for what you believe to be child pornography
10 contained in a certain electronic item?

11 A. Yes. We have lists that we maintain at the office.

12 Q. Do you have a list here?

13	A. I do not.
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14 Q. Did you incorporate a list in your reports that you
15 provided to the government?

16	A.	No.
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17 Q. Do you ever, in your reports -- or have the other
18 person that was involved in the search do the same thing,
19 look for that -- have that list in his report, as far as
20 you know?

21 A. I don't understand the question.

22 Q. Well, you had Mr. Horvath, who was the other person
23 who helped you with the search; is that correct?

24	A. Correct, yes.
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25 Q. And would it be fair to say that his job, as well as

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1 yours, is to look at the same material --

2 A. Yes.

3 Q. And both of you make an assessment as to whether
4 something is child pornography or not?

5 A. Yes.

6 Q. Did he have a list that he referred to, in terms of
7 what he'd be looking for that would help him identify child
8 pornography, just based upon the file name?

9 A. I don't know if he had a list with him that
10 particular day.

11 Q. And do you know if -- whether or not he ever
12 authored a report, that would have included search terms
13 that he was looking for specifically on these items?

14 A. No, he didn't author a report, I know that.

15 Q. And just to make sure we're clear here, your
16 testimony was, is that Mr. Klepping spoke perfect English?

17 A. No, I didn't say that.

18 Q. Okay. Well, can you describe for me how much
19 English Mr. Klepping knew?

20 A. They both spoke communicable English.

21 Q. I'm asking specifically about Mr. Klepping. I
22 understand Mr. Alfter. But tell me the level of English
23 comprehension that Mr. Klepping had.

24 A. He answered all of our questions.

25 Q. Is that caught on videotape or is that on videotape?

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1 A. No.

2 Q. Is that on audio tape?

3 A. No.

4 Q. That's based upon your assessment here today?

5 A. Yes.

6 Q. And you don't speak German?

7 A. I do not.

8 MR. SANFT: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 FURTHER REDIRECT EXAMINATION

11 BY MS. ROOHANI:

12 Q. Was Mr. Klepping able to give you the password for
13 his phone?

14 A. Yes.

15 Q. And he spoke well enough English to be able to do
16 that for you?

17 A. Yes.

18 MS. ROOHANI: No more questions, Your Honor.

19 MR. SANFT: No further questions, Your Honor.
20 Thank you.

21 THE COURT: All right. Thank you, sir. You may
22 go ahead and take anything you brought in with you, but
23 leave all the exhibits here that were already here.

24 THE WITNESS: Do you want me to close that book
25 for you?

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1 THE COURT: Sure. Thank you.

2 Ms. Roohani, do you want to call your next
3 witness?

4 MS. ROOHANI: Yes. And we would ask that
5 Special Agent Giangregorio be released. I believe he has
6 travel plans for this evening.

7 MR. SANFT: No objection, Your Honor. Thank
8 you.

9 THE COURT: All right. You are released, sir.
10 Thank you for coming in today.

11 (The witness was excused.)

12 MS. ROOHANI: The United States calls Thomas
13 Radke.

14 COURTROOM ADMINISTRATOR: Please remain standing
15 and raise your right hand.

16 You do solemnly swear that the testimony you
17 shall give in the cause now before the Court shall be the
18 truth, the whole truth, and nothing but the truth, so help
19 you God?

20 THE WITNESS: I do.

21 COURTROOM ADMINISTRATOR: Thank you, sir. You
22 may be seated.

23 Please state and spell your full name for the
24 record.

25 THE WITNESS: Thank you. Thomas Michael Radke,

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1 T-h-o-m-a-s M-i-c-h-a-e-l R-a-d-k-e.

2 THE COURT: You can go ahead and adjust the
3 microphone towards you if you'd like.

4 MS. ROOHANI: May I inquire?

5 THE COURT: Yes, you may. Go ahead.

6 MS. ROOHANI: Thank you.

7 (Refer to separate transcript for testimony
8 of Thomas Michael Radke, previously
9 transcribed.)

10 * * * * *

11 THE COURT: All right. Well, it's 4:52. So I
12 don't think we're going to get very much in to the next
13 witness. So let's go ahead and recess for the night.

14 I'm looking at the calendar here that we put
15 together. And it has us starting at 9:00 a.m. tomorrow.
16 But I could start earlier, at 8:30, if you all are
17 available to start at 8:30. It's up to you. I'm looking
18 at my calendar. I don't have anything at 8:30.

19 MS. ROOHANI: We are available, Your Honor, if
20 that's easier for you.

21 THE COURT: All right.

22 Mr. Marchese, Mr. Durham, how are you --

23 MR. MARCHESE: Unfortunately, we have private
24 practices to run.

25 THE COURT: Right. So that's why I'm asking you

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1 if you want to start --

2 MR. MARCHESE: I'm scrambling. I'm waiting on
3 the text to come back if they'll cover my state court. So
4 if we could do 9:00, just to be safe.

5 THE COURT: Okay. So we'll start tomorrow at
6 9:00. We do need to end between 11:50 and 8:30. I do have
7 students coming in. Obviously I don't want them to observe
8 this particular case. So I think they're going to be
9 observing a different case, and then I'll just be speaking
10 to them in general. So I just need to take a little break
11 at 11:30. And then we can resume again at 1:00.

12 So you all will just have a little bit of a
13 longer lunch. And then we'll be done at about 4:15 because
14 we have a yearly attorney admission ceremony beginning at
15 4:30 in the courtroom next door, in the ceremonial
16 courtroom.

17 So that's the plan for tomorrow.

18 And then for Wednesday the plan is 1:00 to 5:00
19 p.m.; Thursday 1:00 to 5:00 p.m.; and then we'll see as we
20 get closer to the weekend.

21 All right?

22 MR. SANFT: Yes, Your Honor.

23 THE COURT: Okay. We'll see you back here
24 tomorrow at 9:00 a.m.

25 And, Aaron, you're going to lock it up so they

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1 can keep stuff here, or do they need to take everything
2 with them?

3 COURTROOM ADMINISTRATOR: Yes, Your Honor. They
4 can keep things in the courtroom.

5 MS. ROOHANI: Your Honor --

6 THE COURT: And when I say that, I have to
7 qualify it with, one time we were having trial, leaving
8 everything, it was a multiple defendant case, so everybody
9 had a lot of different things out here, and Lance calls me,
10 our clerk of court calls me about 5:30 in the morning and
11 says, "Your Honor, when I call you at 5:30 it means bad
12 news."

13 And a water mane had broke, and it the leaked
14 out on everything. They were able to take out as much
15 stuff as they could. But there were things that were
16 destroyed.

17 So when I say you can leave them in here, I'm
18 just saying we'll lock it up so no person can come in here.
19 But I can't guarantee that there won't be any other damage.

20 Yeah, you can still see a little. We did pretty
21 good, but you see it still. We even had to redo the tables
22 and the carpeting and everything.

23 MS. ROOHANI: Your Honor, since I'm to provide
24 defense with a copy of 34, that is the only copy, and it's
25 already been -- well, it hasn't been admitted, but it's --

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1 may I take that copy --

2 THE COURT: Yeah. Burn a new copy --

3 MS. ROOHANI: -- and burn a copy --

4 THE COURT: -- and give it to them please.

5 MS. ROOHANI: Thank you.

6 COURTROOM ADMINISTRATOR: All rise.

7 (The proceedings adjourned at 4:56 p.m.)

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I certify that the foregoing is a correct
transcript from the electronic sound recording
of the proceedings in the above-entitled matter.



6/16/17

Donna Davidson

Date